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*Law Department*

**70444**

# The City of Seattle—Legislative

## REPORT ON THE

## Your Committee on

3/12/97 Parks, Public Grounds, and

Full Council sat 9-0

## Committee Chair

SMEAD 63 YSP 17117

**CONFIDENTIAL FILE NO.**

Introduced: 3/10/92	By: Donaldson
Referred: 3/11/92	To: PPGR
Referred:	To:
Referred:	To:
Reviewed: MAR 17 1992	Second Reading: MAR 17 1992
Third Reading: MAR 17 1992	Signed: MAR 17 1992
Presented to Mayor: MAR 17 1992	Approved: MAR 20 1992
Submitted to City Clerk: MAR 20 1992	Published: Little 248
Voted by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

*Law Department*

INDEXED  
INDEXED

## The City of Seattle--Legislative Department

Date Reported  
and Adopted

### REPORT OF COMMITTEE

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_  
report that we have considered the same and respectfully recommend that the same:

3/12/97 Parks, Public Grounds and Recreation 3-0 DORIS

Full Council vote 9-0

\_\_\_\_\_  
Committee Chair

ORDINANCE 118525

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to execute with the Washington State Department of Transportation the Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement, airspace leases for certain Active Recreation Areas and the Day Street Waterfront Area and a Ground Lease for the Old Colman School playground.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Superintendent of Parks and Recreation and recommended by the Mayor, said Superintendent is hereby authorized to execute and deliver on behalf of The City of Seattle, the following agreements with the Washington State Department of Transportation, which agreements shall be substantially in the form attached hereto and identified as indicated below:

Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement (Attachment 1)

Ground Lease (Exhibit 3)

Active Recreation Areas Airspace Lease (Exhibit 4)

Day Street Waterfront Area Airspace Lease (Exhibit 5)

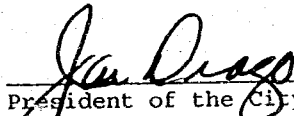
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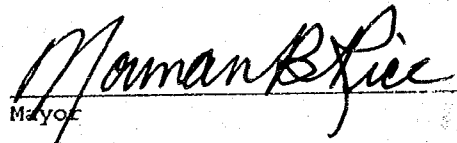
Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but is not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020

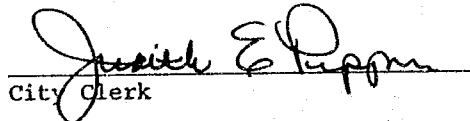
Passed by the City Council the 17 day of March, 1997, and signed by me in open session in authentication of its passage this 17 day of March, 1997.

  
President of the City Council

Approved by me this 20 day of March, 1997.

  
Mayor

Filed by me this 20 day of March, 1997.

  
City Clerk

(SEAL)

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Seattle  
Department of  
Parks and Recreation



Kenneth R. Bourdeau, Acting Superintendent  
Norman B. Rice, Mayor

February 23, 1997

The City Council  
City of Seattle

Via: Mayor Norman B. Rice

Attention: Tom Tierney, Director, Office of Management and Planning

Subject: AN ORDINANCE, relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into an Agreement with the Washington State Department of Transportation (WSDOT) for the Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement pertaining to that approximately 38.77 Acres of land within the area known as the I-90 Corridor from I-5 to Lake Washington and 7.22 Acres together known as the "Replacement Lands" therefor; all by a three-fourths vote of the City Council.

Honorable Members:

We are requesting the adoption of the attached legislation, which completes the negotiations between the Washington Department of Transportation (WSDOT) and the City for the area commonly known as the I-90 Park. Because WSDOT is not in the business of maintaining park lands, it was decided early on that the Seattle Department of Parks and Recreation would maintain the new park with WSDOT paying the Department for a substantial part of the costs associated with maintenance for portions of the premises.

This proposed agreement is similar to an agreement negotiated between WSDOT and the City of Mercer Island for the Mercer Island portion of the I-90 corridor. The City of Seattle began negotiating this maintenance agreement for the I-90 Park with the WSDOT. Numerous meetings were held over the intervening years to define and make decisions about the many issues related to completing a successful agreement. The City was represented at these meetings by key staff from the Department of Parks and Recreation, the Seattle

Engineering Department, the Department of Housing and Human Services and the City Attorney's Office.

The agreement covers both maintenance and property issues. The property issues that are resolved in this agreement include replacement property for park lands that were taken for transportation purposes and various air-space or ground leases required for park uses on WSDOT property. The new park lands exceeds 50 acres. Under the term of this Agreement and concurrent leases the City will not be taking over the maintenance of all the acreage at once but rather on a phased basis determined by the completion of contractor warranty periods for the ten different WDOT contract areas. By the end of 1998 the City will be responsible for maintenance of all new park areas.

The design of the park has received national acclaim. The new park includes a children's play areas, a soccer field, tennis courts, extensive bike trails, outdoor basketball courts, viewpoints, picnic facilities, numerous art works and many passive areas.

We appreciate your consideration of this proposed ordinance. Additional Information is submitted pursuant to the city of Seattle's SOP 100-014. If you have any questions about this legislative material, please call Duane Pentilla, Parks Resource Manager, at 684-4135, Curt Green, Director of Finance and Administrative Services, at 684-8005, or myself.

Sincerely,



Kenneth R Bounds  
Superintendent

KRB:rab  
[ i-90lidltr.doc]

Attachments

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### **Legislative Request Supporting Information**

In conformance with the City of Seattle Standard Operating Procedure 100-014, the following information is submitted:

**Title Of Program:** A proposed ordinance, relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into an Agreement with the Washington State Department of Transportation (WSDOT) for the Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement pertaining to that approximately 38.77 Acres of land within the area known as the I-90 Corridor from I-5 to Lake Washington and 7.22 Acres together known as the "Replacement Lands".

**Statement of Objectives:** This proposed legislative package includes an agreement and concurrent leases between the Washington Department of Transportation and the City regarding the care and maintenance of the area commonly known as the I-90 park lands.

**Fiscal Requirements:** WSDOT will pay the City for a substantial part of the costs associated with maintenance for portions of the I-90 Park areas as defined under the terms of the Agreement.

**Facilities and Equipment:** The Seattle Department of Parks and Recreation will provide maintenance for the I-90 Park using existing staff facilities and equipment and by contracting out for some areas of the required premises' maintenance via EDS City Purchasing.

**Evaluation Criteria:** The Department's Park Resources Manager will be responsible for monitoring the maintenance of the I-90 Park under the terms of the Agreement and meeting with WSDOT and other Department staff regarding any of need or concerns regarding the Park.

**Alternatives:** There are no viable alternatives to the proposed ordinance. WSDOT is not in the business of maintaining park lands and the development and use of the I-90 park lands enhances there recreational opportunities of the citizens of Seattle.

**Contact:** Duane Pentilia, Parks Resources Manager, 684-4135.

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TIME AND C E STAMP

**SPONSORSHIP**

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY  
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

_____	_____
_____	_____
_____	_____
_____	_____

John A. Malden

**FOR CITY COUNCIL PRESIDENT USE ONLY**

COMMITTEE(S) REFERRED TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
PRESIDENT'S SIGNATURE

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**CITY OF SEATTLE**  
**TITLE-ONLY PUBLICATION**

The full text of the following ordinance, passed by the City Council March 17, 1997, and published here title only, will be mailed, at no cost, on request for two months after this publication. For further information, contact the Seattle City Clerk at 684-4.

**ORDINANCE NO. 118523**

AN ORDINANCE authorizing an expenditure from the Judgment/Claims Fund to be reimbursed by the Drainage & Wastewater Fund to settle the claim of Jan M. Dyer (C-59407), all by a two-thirds vote of the City Council.

**ORDINANCE NO. 118524**

AN ORDINANCE relating to the Police Department; authorizing the execution of a grant agreement with the Washington State Traffic Safety Commission for financial assistance to purchase one hand-held radar unit; increasing the 1997 Budget of the Police Department; ratifying and confirming prior acts; and making a reimbursable appropriation therefor, all by a three-fourths vote of the City Council.

**ORDINANCE NO. 118525**

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to execute with the Washington State Department of Transportation the Open Space and Recreation Area 1-90 Main-tenance, Redevelopment and Land Con-servancy Agreement, airspace leases for certain Active Recreation Areas and the Bay Street Waterfront Area and a Ground Lease for the Old Colman school playground.

**ORDINANCE NO. 118526**

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIP-er, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, March 31, 1997.

**STATE OF WASHINGTON - KING COUNTY**

City Clerk

—ss.

No. **ORDINANCE 11**

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT: 118523-118526

was published on  
03/31/97

The amount of the fee charged for the foregoing publication is the sum of \$ \_\_\_\_\_, which amount has been paid in full.

03/31/97 Subscribed and sworn to before me on

Notary Public for the State of Washington,  
residing in Seattle

Affidavit of Publication

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# City of Seattle

Executive Department—Office of Management and Planning

Thomas M. Tierney, Director  
Norman B. Rice, Mayor

March 6, 1997

The Honorable Mark Sidran  
City Attorney  
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING  
DEPARTMENT:

Parks and Recreation

SUBJECT:

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to execute with the Washington State Department of Transportation the Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement, airspace leases for certain Active Recreation Areas and the Day Street Waterfront Area and a Ground Lease for the Old Colman School playground.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Celia Grether at 684-8048.

Sincerely,

Norman B. Rice  
Mayor

by

*Celia Grether*

*Dr.* TOM TIERNEY  
Director

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Enclosure

Accommodations for people with disabilities provided on request. An equal employment opportunity - affirmative action employer.  
Office of Management and Planning 300 Municipal Building, Seattle, Washington 98104-1826  
(206) 684-8080 • (TDD) 684-8118 • FAX (206) 233-0085

Printed on Recycled Paper



*ahgbd*  
*3-5-97*

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**OPEN SPACE AND RECREATION AREA  
I-90 MAINTENANCE, REDEVELOPMENT AND LAND CONVEYANCE AGREEMENT  
(SEATTLE)**

THIS AGREEMENT is entered into between THE CITY OF SEATTLE (hereinafter "the City") and the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (hereinafter "WSDOT").

WHEREAS, the WSDOT owns the areas marked in green on Exhibit 1 and, as such, is responsible for the maintenance of the landscaping and other improvements thereon; and

WHEREAS, WSDOT and the City, acting by and through the Department of Parks and Recreation, have agreed to execute concurrently with this Agreement a separate Airspace Lease, whereby the City will lease from WSDOT certain active recreation areas on the sites marked in blue on Exhibit 1, and WSDOT will transfer to the City the responsibility for the maintenance and operation of such areas under that separate Airspace Lease; and

WHEREAS, WSDOT and the City have agreed to execute concurrently with this Agreement a separate Ground Lease, whereby the City will lease from WSDOT the site illustrated in yellow on Exhibit 1, and WSDOT will transfer to the City the responsibility for the maintenance and operation of such area under that separate Ground Lease; and

WHEREAS, WSDOT and the City have agreed to execute concurrently with this Agreement a separate Airspace Lease, whereby the City will lease from WSDOT certain other land referred to as the Day Street Waterfront Area illustrated in blue with double hatchures on Exhibit 1, and WSDOT will transfer to the City the responsibility for the maintenance and operation of such area under that separate Airspace Lease; and

WHEREAS, WSDOT agrees to transfer to the City and the City agrees to accept certain property depicted in blue, shaded with single hatchures, on Exhibit 1 as replacement land for City park land acquired by WSDOT for the SR 90, Junction SR 5 to Vicinity Junction SR 405 project, and the WSDOT agrees to execute separate Quitclaim Deeds transferring said property concurrently with or in advance of this Agreement; and

FINAL (2/13/97)

ATTACHMENT 1

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WHEREAS, the City is willing to assume and undertake, under certain terms and conditions, various maintenance responsibilities with respect to the landscaping and other improvements in the areas marked in green on Exhibit 1 for and on behalf of WSDOT, and WSDOT is willing to compensate the City for the City's performance of such work; and

WHEREAS, it is desirable that an agreement be entered into between the City and WSDOT concerning the maintenance of the landscaping and other improvements made to certain WSDOT owned property within the I-90 Corridor and defining the responsibilities of each of the parties hereto with respect to said landscaping and other improvements;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances described herein, IT IS MUTUALLY AGREED THAT:

**1. IDENTIFICATION OF PROPERTY AFFECTED BY AGREEMENT.**

This Agreement pertains to: (a) that approximately 38.77 Acres of land within the area known as the I-90 Corridor from I-5 to Lake Washington that is colored green on Exhibit 1 (which portion is hereinafter called the "Areas to be Maintained"); and (b) the three (3) parcels of land that contain, in the aggregate, approximately 7.22 Acres of land within the I-90 Corridor from I-5 to Lake Washington, that are colored blue, shaded with single hatchures, on Exhibit 1, and are to be conveyed by WSDOT to the City (which parcels are hereinafter collectively called the "Replacement Lands").

Other areas that are depicted in blue on Exhibit 1 that are outside of the Areas to be Maintained and the Replacement Lands but which are subject to the leases that the parties have agreed to execute concurrently with this Agreement, include the following (which may be referred to hereinafter by the definition specified in the second column below):

Blue	Active Recreation Areas (Airspace Lease)	Sturgus Artwork; Approx. 5.18 Acres Atlantic Street Park; Proposed Tennis Courts; Existing & Proposed Basketball Courts; Sportsfield; Tract 37 Screening Fence; Urban Peace Circle; Existing Tennis Courts; Children's Play Area; and East Portal Mt. Baker Ridge Viewpoint (on Lake Wn. Blvd. So.)
------	--	--

Blue with Day Street Double Waterfront Area Hatchures (Airspace Lease)	Open Space, Waterfront Access and Parking Lot	Approx. 3.96 Acres
Yellow Old Colman School Playground (Ground Lease)	Old Colman School Playground for Park & Recreation Use	Approx. 2.30 Acres

## 2. EXHIBITS TO AGREEMENT.

Exhibits attached to and made a part of this Agreement include:

- Exhibit 1 - Maps depicting:
- a) Active Recreation by Airspace Lease;
  - b) Replacement Lands;
  - c) Ground Lease for Park & Recreation Use;
  - d) Areas to be Maintained; and
  - e) Waterfront Recreation by Airspace Lease.
- Exhibit 2 - Chart titled LEVEL OF CARE For Maintenance Activities.
- Exhibit 3 - Ground Lease
- Exhibit 4 - Airspace Lease, Active Recreation Areas
- Exhibit 5 - Airspace Lease, Day Street Waterfront Area

## 3. WSDOT REDEVELOPMENT OBLIGATIONS.

WSDOT has constructed landscaping on the Areas to be Maintained and on the Replacement Lands consistent with the standards set forth in the "I-90 Seattle Landscape Supplemental Design Report #1 - Part A, Washington State Department of Transportation", dated March 1986; the requirements of the Final Environmental Impact Statement that has been approved for the I-90 Project, both of which documents are incorporated herein by this reference; and as otherwise agreed to by the parties. WSDOT has given the City the opportunity to review and comment on the construction plans for the landscaping at the 90% stage and, wherever possible, has incorporated the City's comments in the final construction plans.

## 4. CITY ACCEPTANCE OF MAINTENANCE RESPONSIBILITIES.

For each landscape contract on the Areas to be Maintained and/or the Replacement Lands, not later than sixty (60) calendar days prior to the completion of Plant Establishment (one to three years after completion of landscape installation, as determined by the language of the landscape contract), WSDOT shall schedule and

conduct with the City a field review of that section of the Area to be Maintained and/or the Replacement Lands covered by that landscape contract. The field review will be for the purpose of mutually determining whether or not the landscaping has been installed and maintained in accordance with the approved contract plans and specifications and that Plant Establishment has been completed. The landscape area that is the subject of the review shall be free of litter and debris and all turf, ground cover plantings, shrub plantings and trees shall be healthy and vigorous. All infrastructure facilities such as irrigation and drainage systems shall be demonstrated to be in proper working order.

Any items found non-compliant with the contract plans and specifications shall be documented at the time of the field review for follow-up corrective action by WSDOT and/or its contractor. WSDOT will notify the City when such corrective work has been completed and a follow-up field review of the completed work will be scheduled and conducted, if requested by the City.

Upon joint determination that the landscaping is consistent with the contract plans and specifications and that Plant Establishment is complete, WSDOT shall certify the same in writing to the City. The City shall acknowledge and accept maintenance responsibilities for the area that is the subject of the review consistent with the provisions of this Agreement by the signing of the WSDOT certification by the Superintendent of Parks and Recreation. Provided, that if said certification is not signed by the Superintendent of Parks and Recreation by the fifteenth (15th) working day after receipt of the certification by the City, acknowledgement and acceptance of said maintenance responsibilities shall be deemed made.

##### **5. CITY RESPONSIBILITIES ON AREAS TO BE MAINTAINED.**

For each section of the Areas to be Maintained that the City accepts maintenance responsibilities, as set forth in paragraph 4 herein, the City shall assume responsibility for and shall undertake, on behalf of the WSDOT, maintenance responsibilities as follows:

- A. At a minimum, maintaining such areas to a level equal to or better than the "Medium Level of Care" as defined on Exhibit 2 and consistent with the following paragraphs.
- B. Performing grounds custodial work including but not limited to litter pick-up, garbage collection and disposal, cleaning of hard surfaces, sweeping of trails, keeping drainage structures clean and free of debris and disposing of materials collected in such activities; and performing all trail and sidewalk maintenance, except for structural overlays and work on the main trail from the western portal of the bicycle tunnel through Mount Baker Ridge, easterly through the tunnel and onto the Floating Bridge;

- C. Performing turf maintenance including but not limited to grass mowing, lawn irrigating, trimming, edging, and fertilizing and all other turf cultural practices;
- D. Performing planting bed and tree maintenance including but not limited to weeding, pruning, and fertilizing and irrigating;
- E. Notifying the water and electric utility of City acceptance of payment responsibilities and paying the cost of water used for irrigation purposes and the cost of electrical services;
- F. Performing normal maintenance of the irrigation system such as winter shut down, replacement of heads and risers and all other general maintenance and repairs necessary to keep the system operationally consistent with the standards set forth in Exhibit 2;
- G. Providing and maintaining a secure location for the installation of the irrigation control computer; and after such installation and training of City maintenance staff regarding such control computer, operating and maintaining the computer to control the irrigation systems;
- H. Notifying the telephone utility of City acceptance of payment responsibilities and being responsible for the ongoing cost of use and maintenance of the phone lines necessary to operate the irrigation control computer system, which computer system shall remain the property of WSDOT;
- I. Securing WSDOT written approval prior to making significant changes in the irrigation control computer system's hardware or software;
- J. Removing graffiti from the artwork located within the Urban Peace Circle and the Sturgus Artwork Area as illustrated in blue on page 1 of Exhibit 1;
- K. Removing graffiti on all horizontal surfaces including benches, trails, roadways, etc.; within the area up to ten feet (10') above the ground level on the vertical, public access side of retaining walls, raised planters, ventilation stacks, bridge columns, concrete slope protection structures; and on the artwork stones along the bikeway. Each year after the City has expended 100 workhours on graffiti removal as described in this subsection, the City shall provide the WSDOT Northwest Region Maintenance Engineer or such official's functional successor, with documentation showing the labor hours

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expended and expenses incurred by the City on any such graffiti removal. Upon review and approval of said documentation by WSDOT, WSDOT and the City will equally share the costs of said graffiti removal in excess of said 100 workhours as part of the quarterly payments for maintenance as set forth in paragraph 8 herein;

- L. Because of the special free draining nature of the soils on the I-90 lid structure, being responsible for ensuring that the landscaping gets sufficient water to keep the landscaping alive; and if the necessary irrigation is not provided, being responsible for the replacement of landscaping that dies or is severely damaged due to lack of water;
- M. Informing City employees, agents, contractors, and permittees who, as such, have any City authorization to affect, or official function or responsibility with respect to, any portion of the special "soil system" on the top of the I-90 Project Lid regarding such system (which consists of a waterproof membrane, drainage systems, filter fabric, drain gravel, irrigation system and topsoil), and prohibiting the damaging of such system by any such person or entity;
- N. Prohibiting any excavation, drilling, or driving of any stake or other material into the special "soil system" by any City employee, agent, contractor, or permittee other than is necessary for the repair of the irrigation system or replacement planting of existing trees and other plants, unless the prior written approval of the WSDOT Northwest Region Maintenance Engineer has been secured with respect to such work;
- O. Being responsible for all trail maintenance other than that set forth in paragraph 6 herein, including but not limited to routine trail nonstructural maintenance, including patches, repairs and seal coats or overlays less than 0.72 inch in thickness;

**6. WSDOT MAINTENANCE RESPONSIBILITIES.**

For each section of the Areas to be Maintained that the City accepts maintenance responsibilities as set forth in paragraph 4 herein, WSDOT shall be responsible for the following maintenance work :

- A. Repaving all trails or other structural repairs and overlays greater than 0.72 inch in thickness, when required, the timing of which shall be jointly determined by WSDOT and the City;
- B. Maintaining and repairing the structural components of retaining walls, the bicycle tunnel, the lid structure,



the tunnel structure, overcrossings constructed as part of the I-90 Project, and the main trail from the west tunnel entrance eastwards;

- C. Maintaining all storm drainage facilities, other than cleaning, as necessary to protect the structural integrity of bridges, walls, and other structural features of the I-90 Project;
- D. Replacing the irrigation system, including the computer control system, when required, the timing of which shall be jointly determined by WSDOT and the City based on the annual maintenance cost, the condition of the system and necessity;
- E. Providing the complete computer control system that is necessary to operate the irrigation systems including hardware, phone lines, software, manuals and training in operation of the system;
- F. Performing graffiti removal from the WSDOT control and ventilation buildings, the bicycle tunnel, the eastern tunnel portal and plazas, the superstructure of the floating bridges, the western portal for the bicycle tunnel and all portions of vertical surfaces that are ten feet (10') or more above the ground level;
- G. Providing to the City a copy of all available pesticide application records prior to the City taking on the maintenance responsibilities as provided herein;
- H. Providing to the City a copy of WSDOT contractor irrigation controller programming records, if any; and
- I. If arranged by the City ahead of time, and with the concurrence of WSDOT, programming or arranging to have programmed by the WSDOT contractor the irrigation computer system for the WSDOT contractor's use and, if used, providing the City with said program at the time the City accepts maintenance responsibilities as provided herein.

**7. OTHER APPLICABLE STANDARDS FOR MAINTENANCE WORK.**

A. Flammable/Hazardous Substances. Except as otherwise provided herein, the City shall not store, bring or allow to be brought onto the Areas to be Maintained any toxic or hazardous substances as defined under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or Federal Superfund) (42 U.S.C. § 9601 et seq.), or the Model Toxics Control Act [MTCA; RCW Ch. 70.10SD], or flammable substances including but not limited to explosives, petroleum products, paint, solvents, and resins, without the express written permission of WSDOT.

WSDOT hereby grants permission for the City to bring onto the Areas to be Maintained and to reasonably use toxic, hazardous or flammable substances deemed by the City to be necessary or appropriate to carry out its maintenance responsibilities under this Agreement. Pesticides may be used for landscape maintenance in accordance with manufacturer's directions at the City's risk.

The disposal of any and all toxic, hazardous and flammable substances stored or brought onto the Areas to be Maintained by the City, or allowed by the City to be brought onto said property shall be done in a legal manner by the City.

The City hereby agrees to indemnify WSDOT and hold WSDOT harmless for any costs or liabilities associated with the removal or remediation of any hazardous substances (including petroleum and gasoline product) that have been released or otherwise have come to be located on the site by the activities of the City or any of its employees, agents, contractors, or subcontractors. "Costs" shall include, but not be limited to, all response costs, disposal fees, investigation costs, monitoring cost, civil or criminal penalties, attorney fees, and other litigation costs incurred in complying with state or federal environmental laws, which shall include, but not be limited to, the aforementioned acts; the Clean Water Act, 33 USC Section 1251; the Clean Air Act, 42 USC Section 7401; and the Resource Conservation and Recovery Act, 42 USC Section 6901.

The City further agrees to retain any and all liabilities arising from the off-site disposal, handling, treatment, storage, or transportation of any toxic, hazardous or flammable substances, including petroleum products, removed from the Premises and that liabilities under this section (Flammable/Hazardous Substances) shall survive the expiration of this Agreement.

**B. Utility Franchises.**

(1) WSDOT will make best efforts to require utility franchise and permit holders to give the City 48 hours notice prior to entering upon the Areas to be Maintained for utility installation and maintenance purposes.

(2) The City shall not disturb permanent markers installed by a franchise/permit holder.

(3) Prior to tilling of the soil, or any other operation of the City in which earth, rock or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater, the City must provide notice to all owners of underground facilities by calling 1-800-424-5555 (or such other telephone number as designated). Furthermore, the City must comply with all

applicable provisions of Ch. 19.122 RCW relating to underground facilities.

**8. WSDOT TO COMPENSATE CITY FOR PERFORMANCE OF MAINTENANCE WORK IN AREAS TO BE MAINTAINED.**

WSDOT shall compensate the City costs for performing maintenance work in the Areas to be Maintained, as depicted in green on Exhibit 1, in the base amount of \$6,047.50 (1995 Dollars) per acre per year less the annual offset: (a) in the amount due WSDOT from the City for special events under the Active Recreation Areas Airspace Lease and the Day Street Waterfront Area Airspace Lease, which documents are executed concurrently with this Agreement and any amendments thereto, and which are attached hereto as Exhibits 4 and 5, respectively; and (b) in the amount due WSDOT from the City as consideration for, and for special events under the Ground Lease executed concurrently with this Agreement and any amendments thereto, which is attached hereto as Exhibit 3. This base amount shall be adjusted annually in July of each year by the percentage change that occurred during the preceding calendar year in the U.S. Consumer Price Index for All Urban Consumers ("U.S. CPI"), using the data as published by the Washington State Department of Revenue, Office of the Economic Forecast Council, or its successor; Provided, that in the event such index is discontinued, the parties hereto shall select and use for such adjustment purpose, another, similar index that reflects consumer price changes.

Quarterly payments of such compensation shall be made by WSDOT to the City within thirty (30) days of receipt and acceptance by WSDOT of: (a) a certification from the City that the maintenance services have been performed as required in this Agreement and in accordance with Exhibit 2 (Level of Care for Maintenance Activities) of this Agreement; (b) an invoice from the City for the amount to be paid based on per acre amount less credits as provided herein plus any payments due for graffiti removal as provided in paragraph 5.K. herein; and (c) a completed I-90 Maintenance Work Performed by the City of Seattle form, which shall be specified by the WSDOT Northwest Region Maintenance Engineer. The initial and final payment for less than a full quarter shall be prorated.

Upon receipt of these items WSDOT will field review the Areas to be Maintained. If such areas meet the level of care criteria as specified in Exhibit 2, payment will be made within 30 days. If, in the opinion of WSDOT, said areas have not been maintained to said level of care criteria, the City and WSDOT shall meet to discuss the areas of concern. If differences can not be resolved, WSDOT will withhold a portion of the payment as it deems appropriate.

**9. MINOR IMPROVEMENTS TO THE AREAS TO BE MAINTAINED.**

The parties acknowledge that WSDOT has given permission to the City to install and maintain certain City-owned improvements on the

Areas to be Maintained. These minor improvements include picnic tables, benches, bicycle stands, garbage cans and area illumination. Any additional minor improvements by the City shall require the prior written approval of WSDOT.

**10. CITY ALLOWANCE OF EVENTS ON AREAS TO BE MAINTAINED.**

No use other than passive recreation shall be permitted on the Areas to be Maintained without the prior written approval of WSDOT. Notwithstanding the foregoing, the City may issue event or use permits with the written concurrence of WSDOT for the use of all or a portion of the Areas to be Maintained, provided the minimum requirements listed below and any other requirements deemed reasonably necessary by WSDOT are met. Subject to the provisions herein, the City agrees to manage the use of the Areas to be Maintained for special events. Said management services is hereby deemed adequate consideration for the rental of the portion of the Area to be Maintained for the special event.

- A. The event or use does not affect or impact the traveled lanes or the operation of I-90 or its ramps, and is consistent with the park like atmosphere intended for the area;
- B. The event or use does not exceed the structural loading limits of the design of the I-90 lid for live loads;
- C. There is no charge by the City or the permittee for the use of the land;
- D. The City, in the case of a City produced event, warrants that it is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the City is not self-insured, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- E. The City-authorized group, in the case of other than City produced events, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- F. The City, in the case of a City produced event, agrees to indemnify, save and hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the special event activity;
- G. The City in other than City produced events, shall require the permittee to indemnify, save and hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the activities authorized by the permit;
- H. The City assumes responsibility for all clean up and repair of any damage resulting from the use or event.

**11. INSURANCE.**

City warrants that it is self-insured, and agrees to provide acceptable evidence in the form of a certification of its self-insured status to WSDOT or, if the City is not self-insured, to secure liability insurance in the form and amount reasonably determined necessary by WSDOT; Provided, that WSDOT may reasonably adjust said coverage requirements from time to time based on risk factors and the adequacy of the stated policy limits.

**12. HOLD HARMLESS/INDEMNIFICATION.**

- A. City's Indemnification: The City shall protect, save, and hold harmless and defend the WSDOT, its officers, employees or agents and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the City or any of its officers, employees, agents, contractors, or the contractor's subcontractors, on the Areas to be Maintained under this Agreement.
- B. WSDOT's Indemnification: WSDOT shall protect, save and hold harmless and defend the City and its officers, employees and agents from all claims, actions, costs, damages or expenses of any nature whatsoever (including but not limited to reasonable attorney's fees and costs) arising out of any act or omission of WSDOT or any of its employees, officers, agents, contractors (other than the City) or contractor's subcontractors on the Areas to be Maintained under this Agreement; Provided, that nothing herein shall be deemed to obligate WSDOT to indemnify, hold harmless or defend the City for the acts or omissions of the Federal Highway Administration or utility franchise and permit holders.
- C. Concurrent Negligence or Actions Covered by RCW 4.24.115: If the claims or damages are caused by or result from the concurrent negligence of (i) the WSDOT, or any of its officers, employees, agents, contractors (other than the City) or the contractor's subcontractors and (ii) the City or any of its officers, employees, agents, contractors or the contractor's subcontractor, or involves any action covered by RCW 4.24.115, a party's indemnification obligation hereunder shall be valid and enforceable only to the extent of the negligence of such party or any of its officers, employees, agents, contractors or contractor's subcontractors, as appropriate.

**13. NONDISCRIMINATION.**

The City, as a part of the consideration hereof, does hereby

covenant and agree that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be unlawfully excluded from participation in, be unlawfully denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the Areas to be Maintained under this Agreement, that in connection with the City's performance of maintenance services hereunder, no such unlawful discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, that such unlawful discrimination shall not be practiced against the public in their access to and use of the Areas to be Maintained. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the WSDOT to terminate this Agreement in accordance with the procedures set forth herein.

#### **14. TERMINATION FOR CONVENIENCE.**

This agreement may be terminated for reasons other than non-performance by either party on six (6) months prior written notice to the non-terminating party.

#### **15. DEFAULT & BREACH.**

Upon the default and material breach of this Agreement by either party hereto, the other party may give to the party allegedly in breach notice specifying the nature of such breach, the period of time within which such breach must be cured, and at the option of the party giving such notice, such party's intention to declare a default and to terminate this Agreement in the event such breach is not cured within the specified cure period. Neither party shall be in default unless it fails to cure the breach within thirty (30) days from the giving of such notice of default, except that if the nature of the obligation is such that more than thirty (30) days is required for performance or cure, then the party allegedly in breach shall not be in default if such party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. After the expiration of thirty (30) days from the giving of such notice of default or the time period otherwise provided herein, if one or more of the breaches remains unremedied, this Agreement shall terminate without further notice. The non-breaching party may in writing, at its option, extend the above cure period if, in the judgment of the non-breaching party, an extension is justified.

At any time after the occurrence of a default or defaults under this Agreement and if, in WSDOT's determination, an emergency exists, or the default cure period provided for herein has expired, and while any such default remains unremedied, WSDOT shall have the option of giving verbal notice if an emergency exists, or notice in writing for non-emergent defaults, of its intention to cure such default by itself or through use of agents or contractors. The City agrees to reimburse WSDOT promptly for resultant direct costs WSDOT incurs in curing such default or, in the alternative, that



WSDOT may, at its sole discretion, withhold compensation otherwise due the City under this Agreement in an amount equal to the costs incurred in curing such default.

**16. CONVEYANCE OF "STURGUS PARK" REPLACEMENT LANDS.**

WSDOT shall convey to the City and the City shall accept a total of 157,874 square feet of land between Wall 7 and Sturgus Avenue South (the "Sturgus Replacement Lands" as shown in Exhibit 1) as compensation for the taking of City park land known as Sturgus Park for the construction of I-90. This land transfer shall be by quit claim deed executed concurrently with this Agreement, and upon such conveyance, the land will become the property of the City subject to certain restrictions shown in the deed.

**17. CONVEYANCE OF "JUDKINS PLAYGROUND" REPLACEMENT LANDS (Tracts 16 and 37).**

WSDOT shall convey to the City and the City shall accept a total of 3.6 acres of land as compensation for the taking of land in the Judkins Park vicinity for the construction of I-90. The areas to be deeded are:

- A. A parcel containing approximately 2.73 acres lying immediately east of Martin Luther King Jr. Way South and north of I-90 ("Tract 37" as shown on Exhibit 1); and
- B. A parcel containing approximately 0.87 acres lying between South Judkins Street and the I-90 right of way in the vicinity of 22nd Avenue South ("Tract 16" as shown on Exhibit 1)

These tracts shall be transferred by quit claim deed executed concurrently with or in advance of this Agreement, and upon such conveyance, the land will become the property of the City subject to certain restrictions shown in the deed.

**18. CITY RESPONSIBILITY FOR REPLACEMENT LANDS MAINTENANCE.**

The City shall be responsible for maintaining the Replacement Lands listed in paragraphs 16 and 17 hereof immediately upon the signing of the deeds by WSDOT or upon completion of the Plant Establishment period applicable thereto under the WSDOT's separate landscaping contract, whichever is later, unless the parties agree to an earlier assumption of the maintenance responsibilities by the City; Provided, that if the property transfer is completed prior to the completion of the Plant Establishment period applicable thereto, WSDOT or its contractors, as necessary, shall enter onto such portion(s) of Replacement Lands and construct thereon the required landscaping and maintain the landscaping until the expiration of the Plant Establishment Period. Nothing herein establishes any minimum level of care to be provided to the Replacement Lands after their conveyance to the City.

**19. ASSIGNMENT.**

Neither this Agreement nor any rights created by it may be assigned, provided that nothing herein shall prohibit the City from subcontracting with a third party to perform the maintenance work agreed to herein with the prior written approval of WSDOT, which shall not be unreasonably withheld. Any such subcontract shall not relieve the City of its obligation to maintain the Areas to be Maintained as agreed herein.

**20. RECORD REQUIREMENTS.**

The City shall keep accurate and current at all times records and documents that document work performed by the City and support claims for compensation made under this Agreement. Said records and documents shall be available for review by WSDOT during normal City business hours and shall be retained by the City for a minimum of three (3) years after the payment of compensation. WSDOT reserves the right to inspect, audit and copy any or all said records and documents that relate to this Agreement.

**21. AMENDMENTS.**

No addition to, deletion from, or other modification of any of the provisions hereof shall be valid unless made in writing and signed by an authorized representative of each of the parties hereto.

**22. INTERPRETATION.**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

**23. CUMULATIVE REMEDIES.**

All remedies available at law or in equity to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**24. NO WAIVER.**

No action other than a written notice by one party to the other specifically stating that such notice has the effect of a waiver, shall constitute a waiver of any particular breach or default of such other party. No such notice shall waive a party's failure to fully comply with any other term, condition, or provision of this Agreement, irrespective of any knowledge any officer, employee, or agent of the other party may have of any breach or default of, or noncompliance with, such other term, condition, or provision. No

waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement. The performance or acceptance of maintenance services for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

**25. SUPERSESION OF PRIOR AGREEMENTS.**

This Agreement represents the entire agreement of the parties with regard to the subject matter hereof and supersedes any prior agreement not incorporated herein. In the event of any inconsistency between this Agreement and any prior agreement, whether written or oral, the terms of this Agreement shall prevail.

**26. NOTICES.**

Wherever in this Agreement a written notice is to be given or made, it shall be sent by certified mail addressed to the party at the address listed below, or personally served on the party at the address listed below, unless such party has designated, by written notice previously delivered to the other party, a different address:

WSDOT: ATTN: Northwest Region Maintenance Engineer  
DEPARTMENT OF TRANSPORTATION  
P. O. Box 330310  
15700 Dayton Avenue North  
Seattle, WA 98133-9710

CITY: Superintendent of Parks & Recreation  
THE CITY OF SEATTLE  
Administration Building  
100 Dexter Avenue North  
Seattle, WA 98109

Said notices shall be effective upon receipt of notice in the manner described above.

**27. NEGOTIATED AGREEMENT.**

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

**28. EFFECTIVE DATE OF AGREEMENT.**

This Agreement is effective upon its full execution by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have had their respective representatives sign their names in the spaces below:

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

(Print or type name and title of signer)

Dated: \_\_\_\_\_

THE CITY OF SEATTLE

By: \_\_\_\_\_

(Print or type name and title of signer)

Dated: \_\_\_\_\_

APPROVED AS TO FORM ONLY:

February 13, 1997

By: Bruce Brown  
Assistant Attorney General

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE  
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON )  
 ) ss. (WSDOT ACKNOWLEDGMENT)  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, to me known to be the duly appointed Director, Real Estate Services, Washington State Department of Transportation, who stated, on oath, that \_\_\_\_\_ executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein set forth, and that \_\_\_\_\_ was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or type name of notary)

Notary Public in and for the State Washington, residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE  
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STATE OF WASHINGTON )

THE COUNTY OF KING )

) ss.  
)

(CITY ACKNOWLEDGMENT)

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_

\_\_\_\_\_ to me known to be the \_\_\_\_\_ of The City of Seattle, who on oath stated that \_\_\_\_\_ executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes herein mentioned, and that \_\_\_\_\_ was authorized to execute the said instrument for and on behalf of The City of Seattle.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or type name of notary)

Notary Public in and for the State Washington, residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

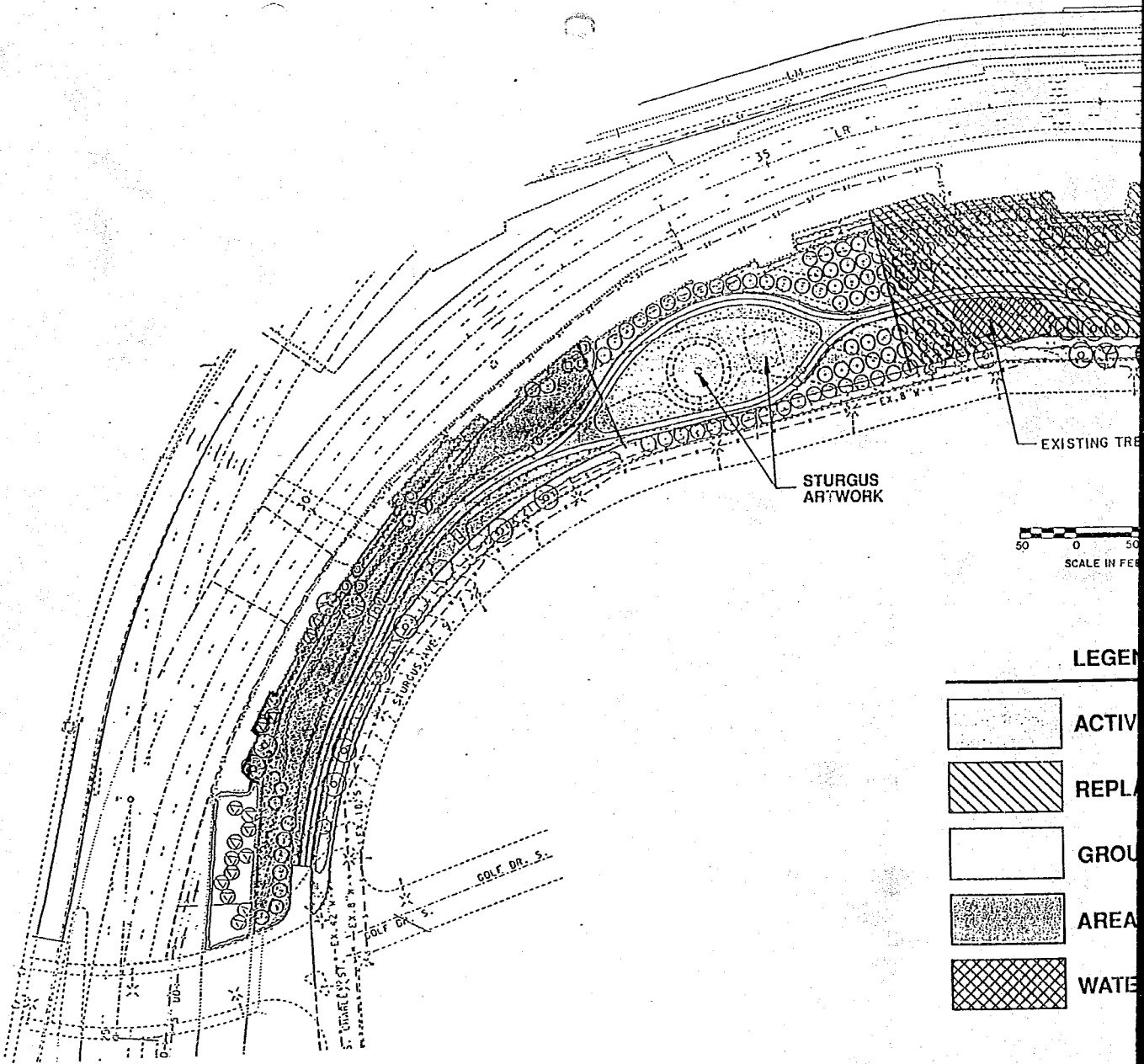
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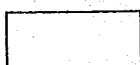
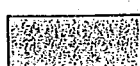

## LEVEL OF CARE

		NATIVE	LOW	MEDIUM	HIGH
GRASS HEIGHT:	Turf			2-3" 15 Mow/Year	1.5-2" 30 Mow/Year
	Rough	Unmown Meadow	6-9" 4 Mow/Year	3-5" 8 Mow/Year	
EDGE DEFINITION:		None	None	Chemically	Chemically & Mechanically Clean, Sharp, Defined Boundary
PLANT CARE:	Pruning	None	None	Perimeter	Shearing & Shaping
	Fertilization	None	25% per year	50% per year	100% per year
	Irrigation	None	None	Cont. Operation 2nd Priority	Cont. Operation 1st Priority
PLANT REPLACEMENT:		None	None	As Time Allows	Immediate
DANGER TREES:		Immediate Removal of Danger Trees			
WEED CONTROL:		Noxious Only	Noxious & Invasive	Seasonal	Weed-Free Appearance
NOXIOUS WEEDS:		NO NOXIOUS WEEEDS			
MULCH:		None	None	None	15% Per Year
DISEASE/PEST CONTROL:		None	Plant Survival	Plant Survival	Appearance
VANDALISM/LOSS (Except Plants):		None	Limited	Repair/Replacement/Cleaning	
LITTER CONTROL:		Annual	Annual	4 Times Per Year	20 Times Per Year
PAVED AREAS (Including Trails and Active Recreation Surfaces):		Safe, Clean, Smooth, Litter Free, Snow & Ice Removed, Patch, Seal As Required			

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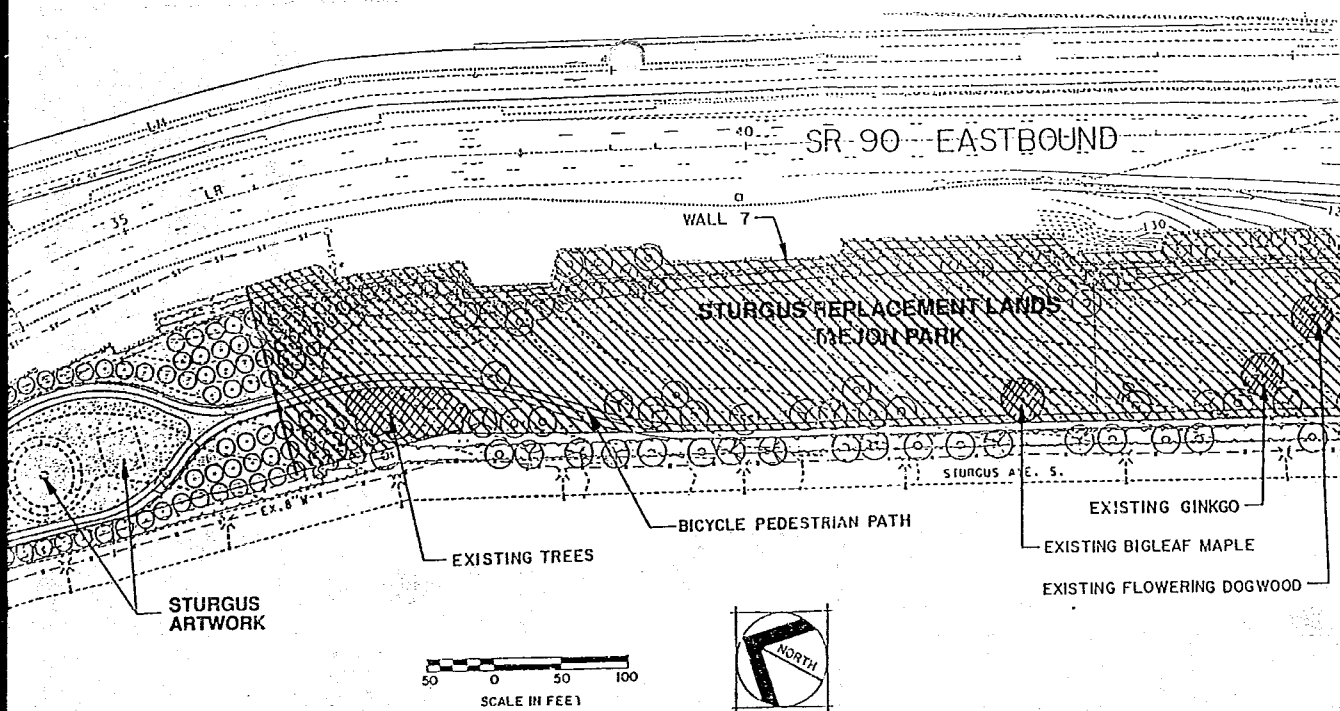


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 EXHIBIT # 1  
 SHEET 1 OF 10

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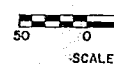
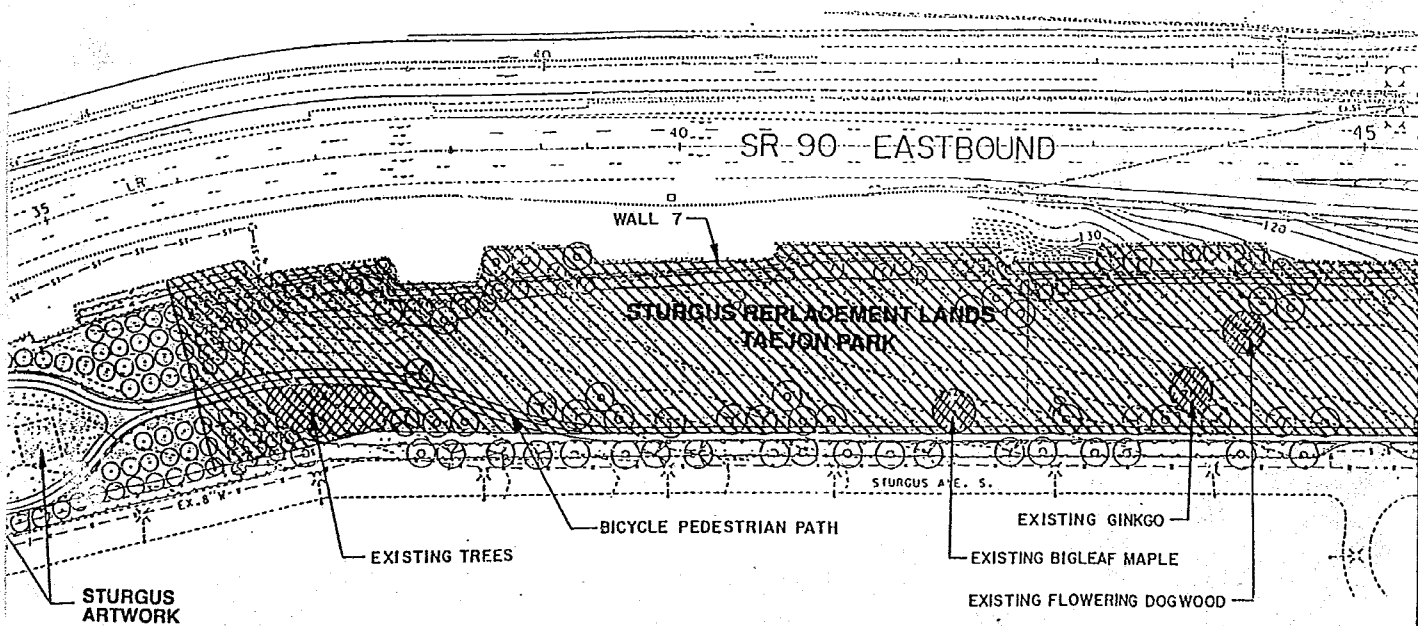
	ACTIVE RECREATION BY AIR SPACE LEASE
	REPLACEMENT LANDS
	GROUND LEASE FOR PARK AND RECREATION USE
	AREAS TO BE MAINTAINED
	WATER FRONT RECREATION BY AIR SPACE LEASE

Date: 13 FEB 1997

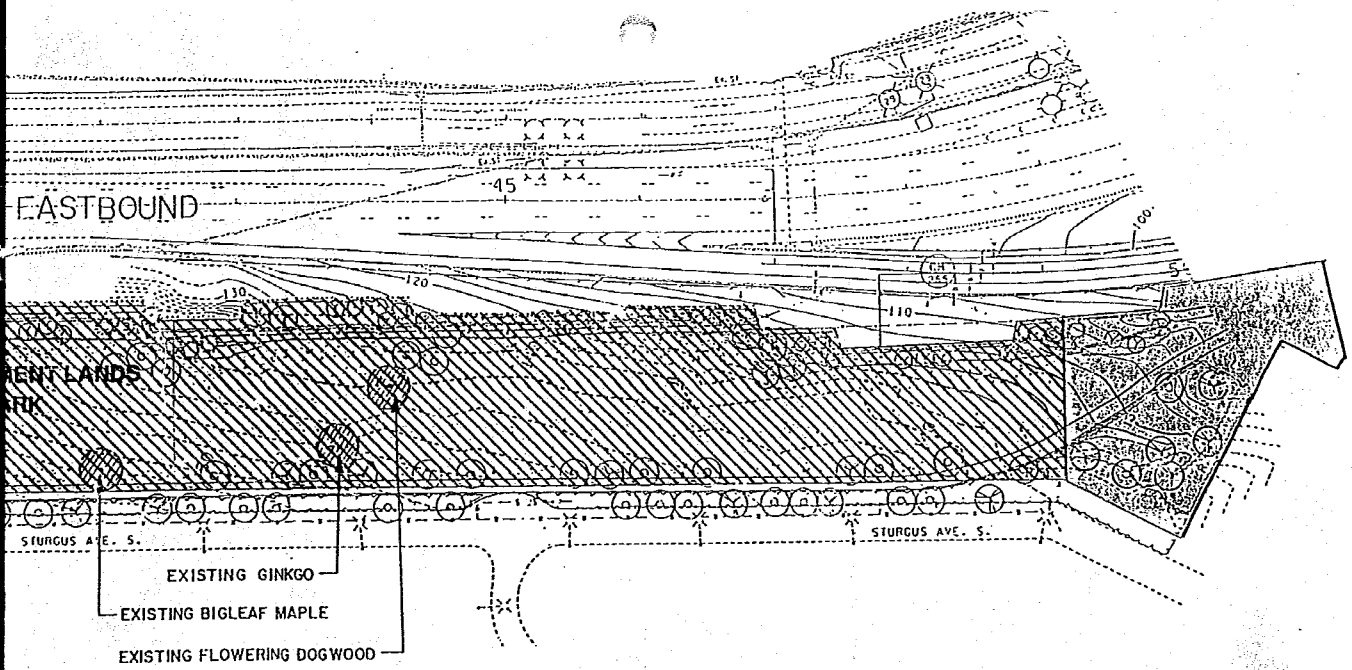
SR 90  
ATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1  
SHEET 1 OF 10

GM1319

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Date: 13 FEB 1997



Date: 13 FEB 1997

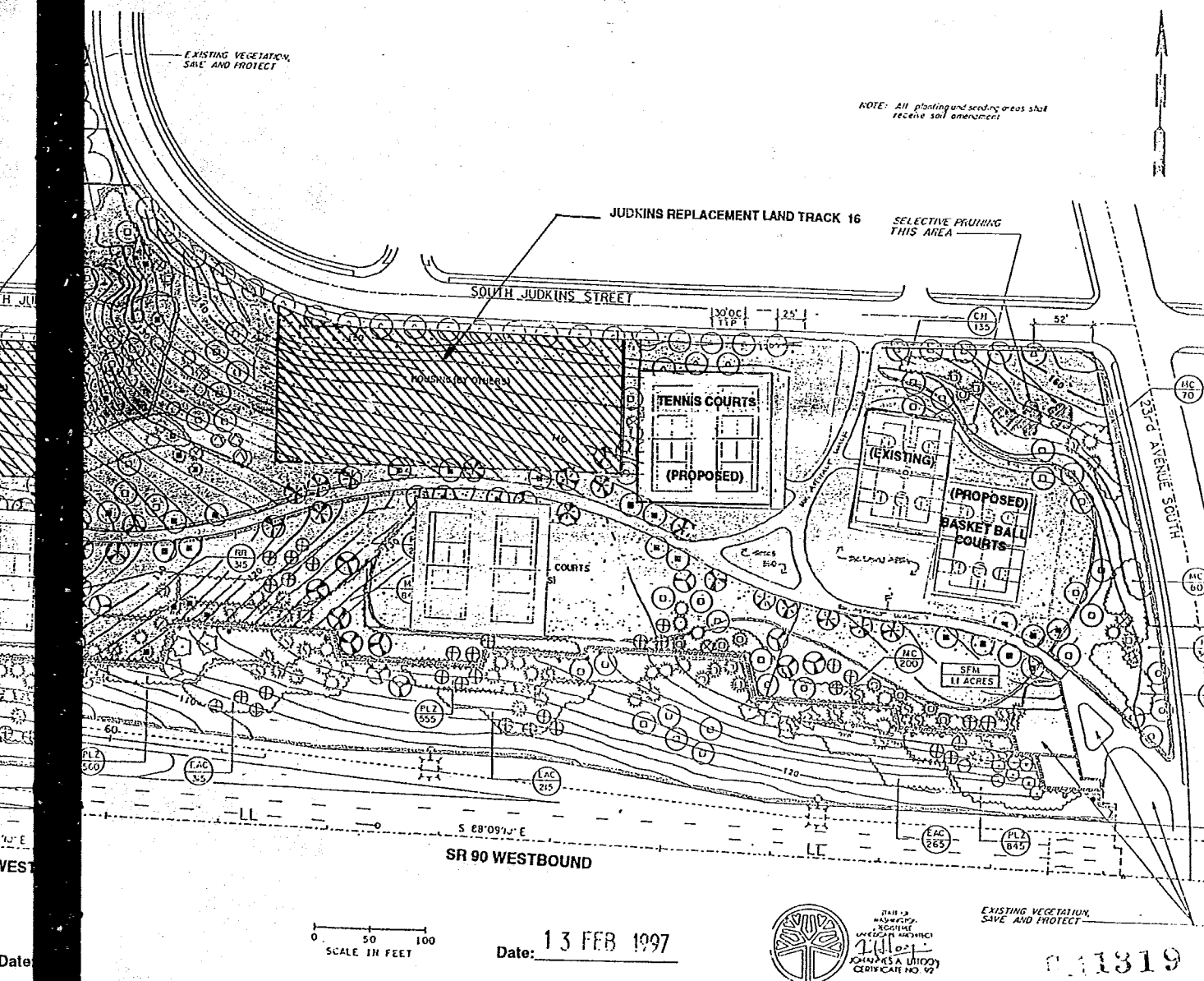
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SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1  
SHEET 2 OF 10

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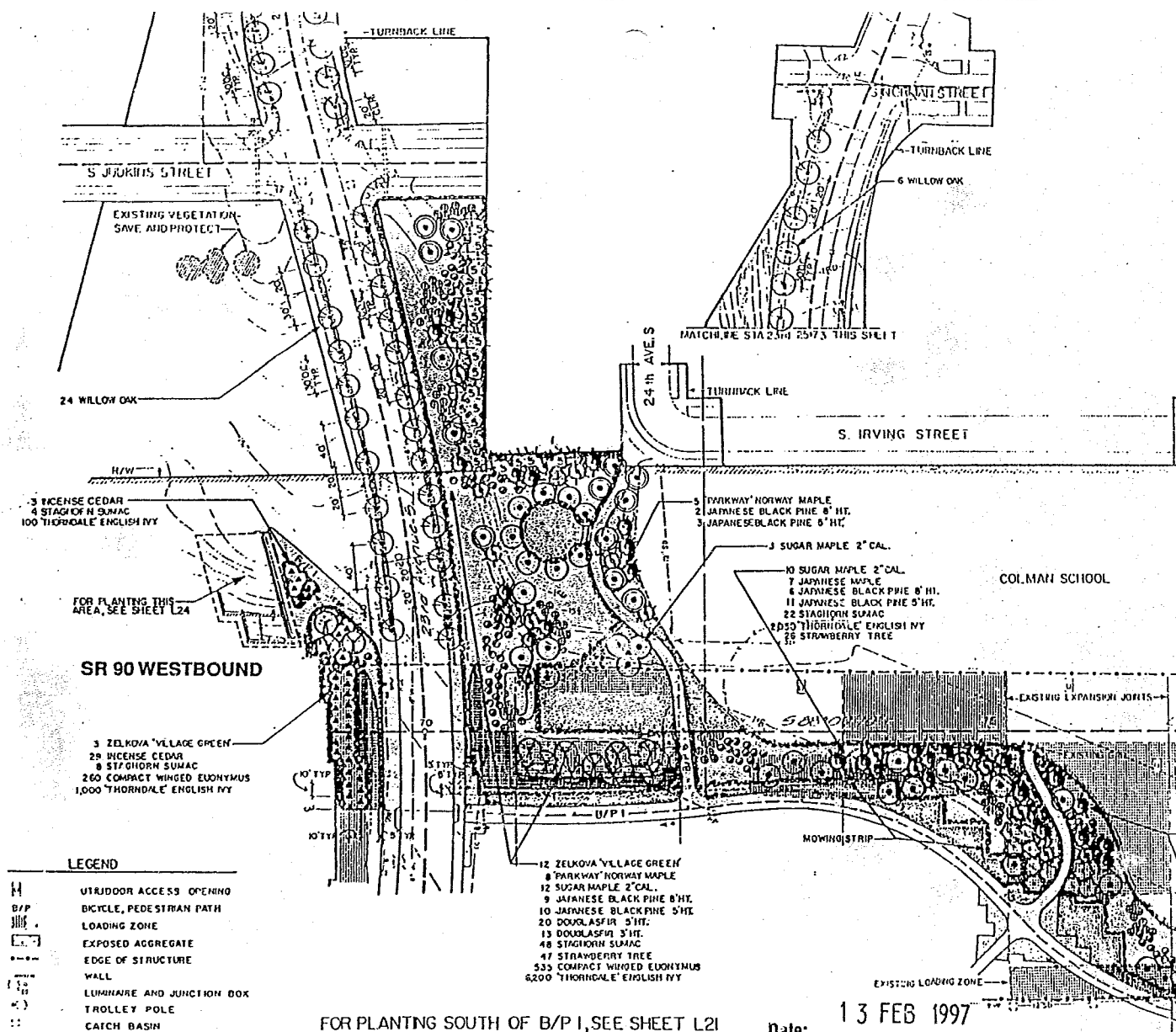


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STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON STATE  
CIVIL ENGINEER NO. 97

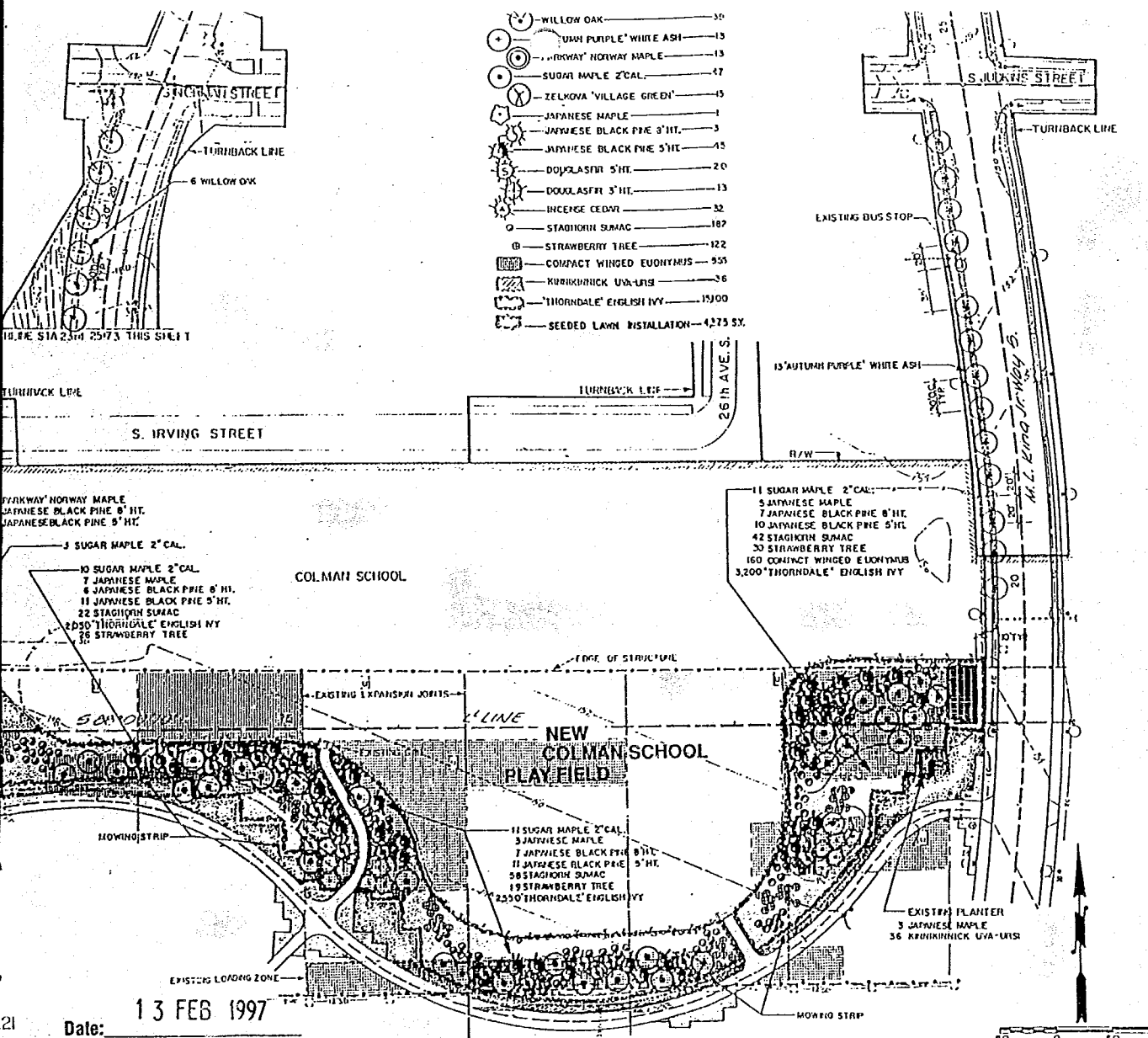
ROAD PROJ. NO. ACI-090-11387	PROGRAM DEVELOPMENT DIVISION	Washington State Department of Transportation	SR 90 SEATTLE MAINTENANCE AGREEMENT EXHIBIT # 1
			SHEET 5 OF 10



DRAWN P.E.A.		STATE		FED. AID PROJ. NO.		SHEET NO.		TOTAL SHEETS		HIGHWAY DIVISION	
SIGNED J.B. P.E.A.		10		WASH.							
CHECKED J.R.		JOB NUMBER									
DESIGNED D.KOWE		CONTRACT NO.									
ST. ADM. R. ANDERSON		DATE		REVISION		BY		APP'D		APPROVED	



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Date: 13 FEB 1997

HIGHWAY DIVISION



Washington State  
Department of Transportation

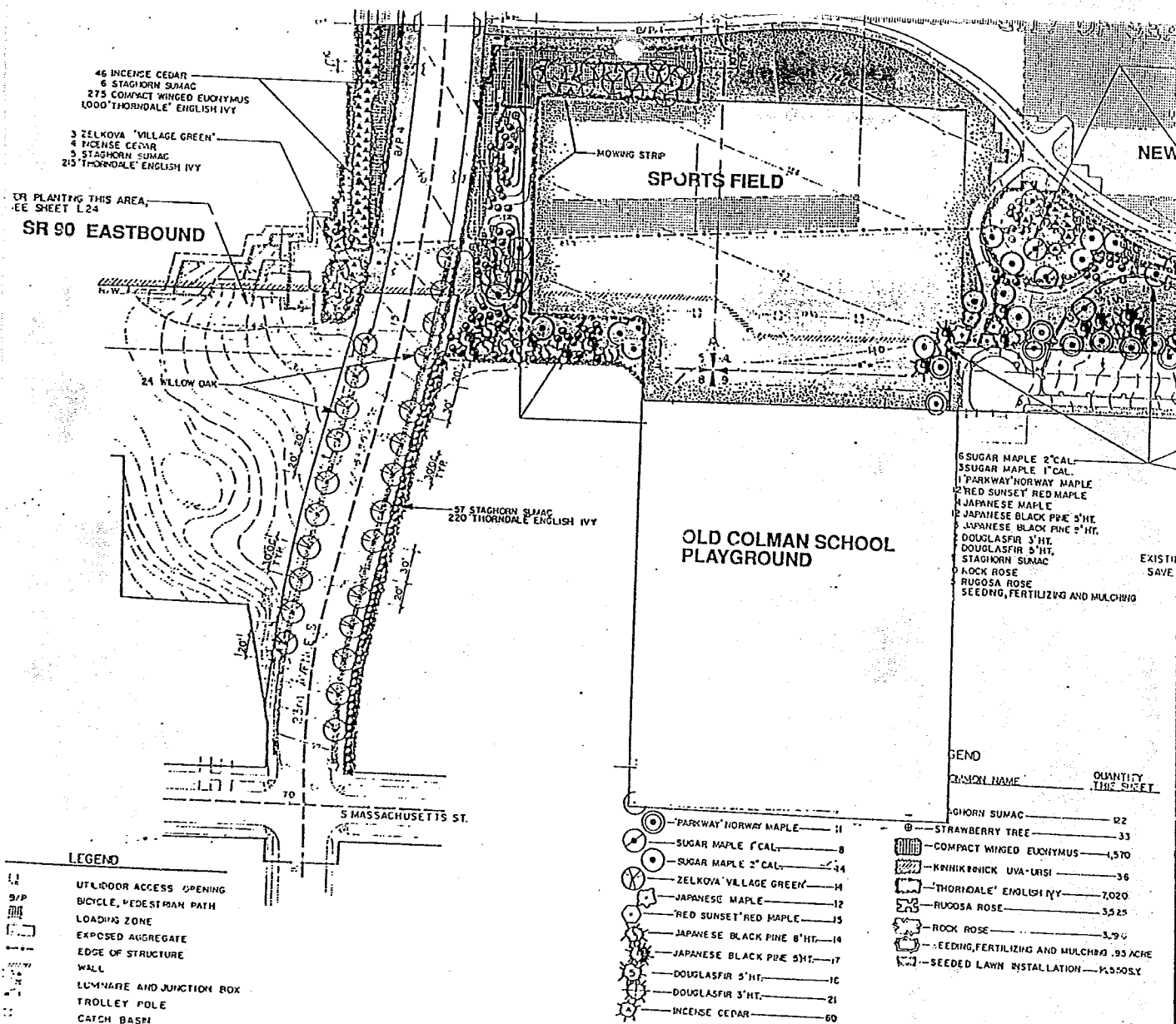
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SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1

SHEET 6 OF 10

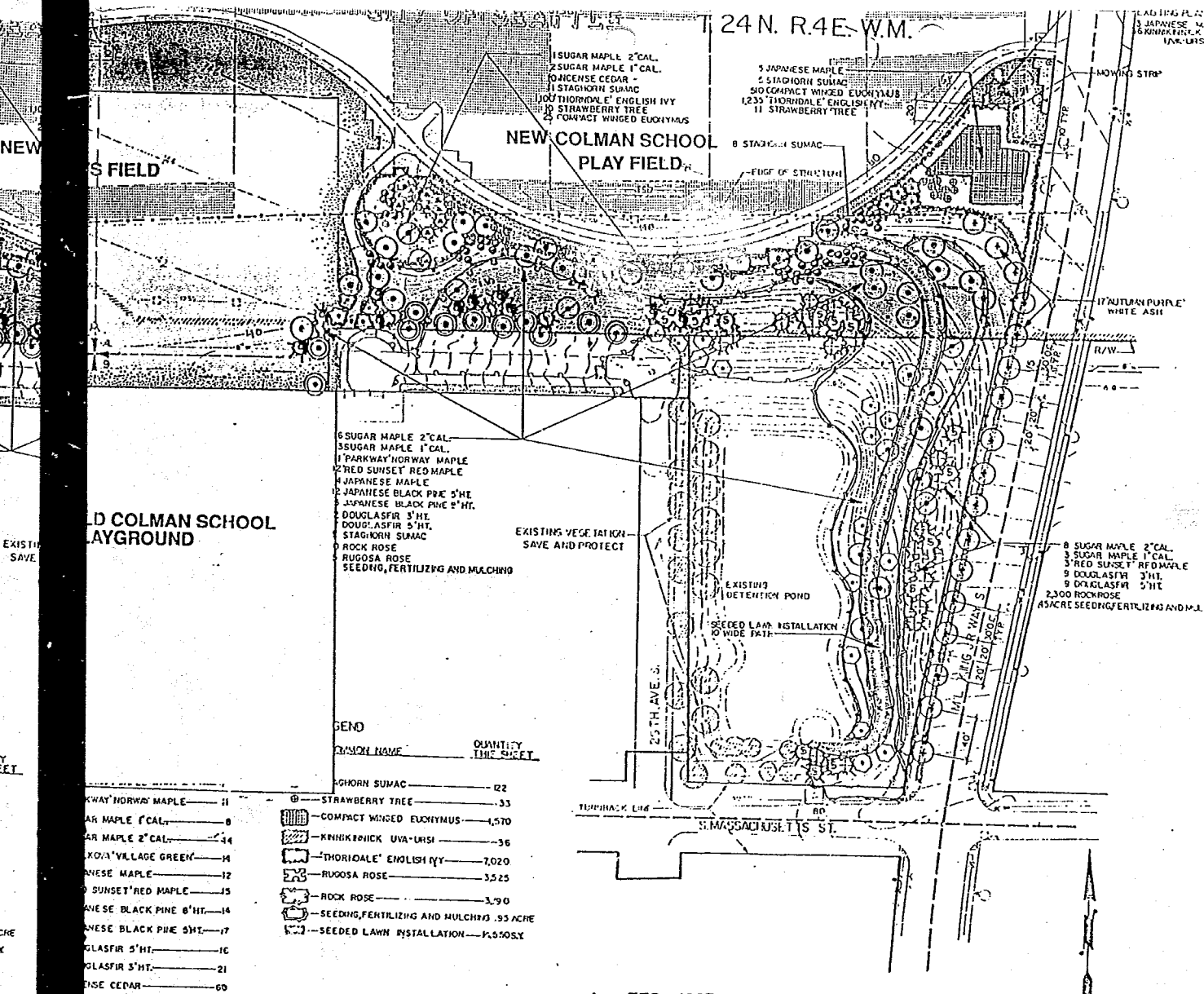
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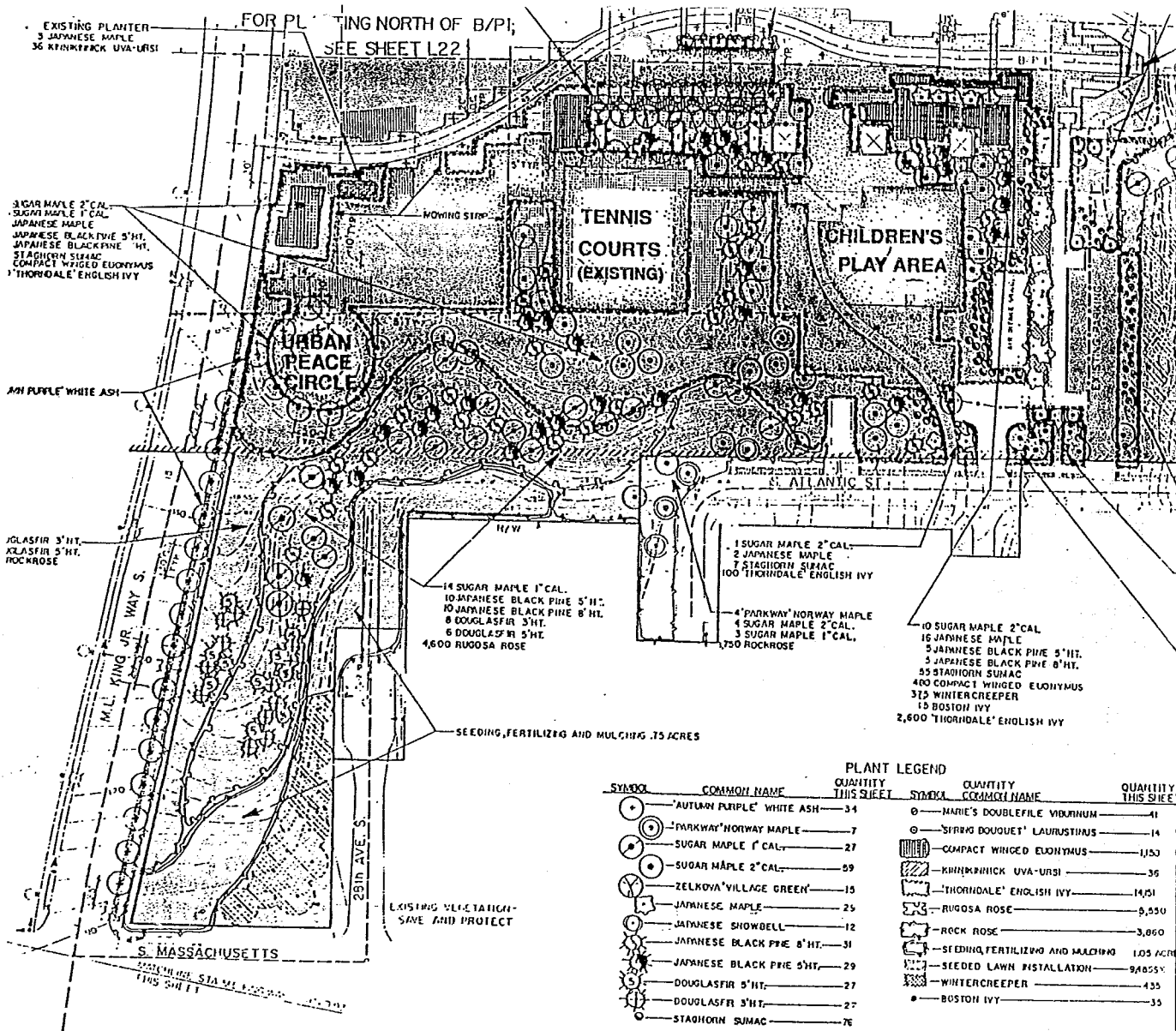
DATE: 13 FEB 1997
























HIGHWAY DIVISION

Washington State Department of Transportation

SR 90 SEATTLE MAINTENANCE AGREEMENT EXHIBIT # 1

SHEET 7 OF 10




PLANT LEGEND					
SYMBOL	COMMON NAME	QUANTITY THIS SHEET	SYMBOL	COMMON NAME	QUANTITY THIS SHEET
	'AUTUMN PURPLE' WHITE ASH	34		MARIE'S DOUBLEFILE VIBURNUM	41
	PARKWAY NORWAY MAPLE	7		'SERRING DOUGLET' LAURUSTINUS	14
	SUGAR MAPLE 1' CAL.	27		COMPACT WINGED ELONATUS	1,153
	SUGAR MAPLE 2' CAL.	59		KHINKHINICH UVA-URSI	36
	ZELKOVA 'VILLAGE GREEN'	15		'THORNHOLE' ENGLISH IVY	14,61
	JAPANESE MAPLE	25		RUGOSA ROSE	9,550
	JAPANESE SNOWWELL	12		ROCK ROSE	3,860
	JAPANESE BLACK PINE 8' HT.	31		SEEDING FERTILIZING AND MULCHING	1.05 ACRES
	JAPANESE BLACK PINE 5' HT.	29		SEEDED LAWN INSTALLATION	9,855.5
	DOUGLASFIR 8' HT.	27		WINTERCREEPER	435
	DOUGLASFIR 5' HT.	27		BOSTON IVY	35
	STAGHORN SUMAC	76			

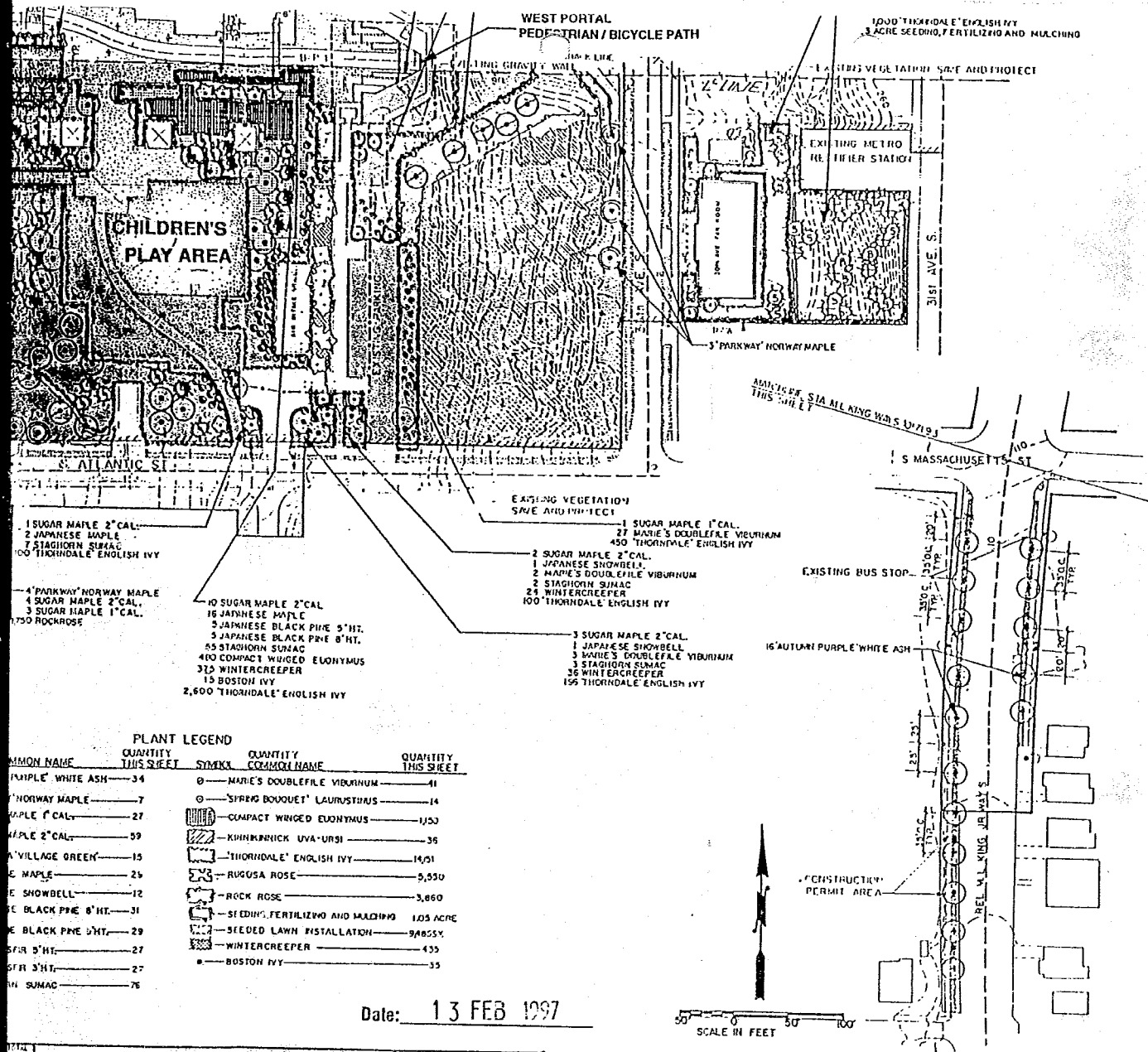
Date: 1

PERSON NO.		STATE		FED. AID PROJ. NO.		FISCAL YEAR		TOTAL B-1411	
10		WASH							
JOB NUMBER									
CONTRACT NO.									
DATE		REVISION		BY		APP'D		APPROVED	

DOT FORM 221-012



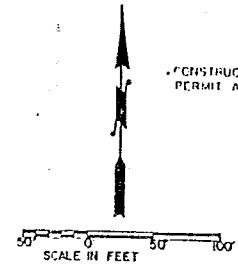
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PLANT LEGEND

COMMON NAME	QUANTITY THIS SHEET	SYMBOL	COMMON NAME	QUANTITY THIS SHEET
MAPLE WHITE ASH	34	○	MARIE'S DOUBLEFILE VIBURNUM	41
NORWAY MAPLE	7	○	'SINGING BOUQUET' LAURUSTRIUS	14
MAPLE 1\" CAL.	27	■	COMPACT WINGED EUONYMUS	1,550
MAPLE 2\" CAL.	59	■	KHINKHNUCK UVA-URSI	35
VILLAGE GREEN	15	■	'THORNDALE' ENGLISH IVY	14,01
E MAPLE	26	■	RUGOSA ROSE	5,550
E SNOWBELL	12	■	ROCK ROSE	3,860
E BLACK PINE 8\" HT.	31	■	SEEDING, FERTILIZING AND MULCHING	105 ACRE
E BLACK PINE 5\" HT.	29	■	SEEDED LAWN INSTALLATION	9,855
SFR 5\" HT.	27	■	WINTERCREEPER	435
SFR 3\" HT.	27	■	BOSTON IVY	35
IN SUMAC	75			

Date: 13 FEB 1997



Washington State  
Department of Transportation

SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1

SHEET 9 OF 10

L23

RA-1-10542  
IC:1-17-05677

GROUND LEASE

THIS IS A LEASE entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, hereinafter called "WSDOT," and THE CITY OF SEATTLE, hereinafter called "Lessee";

WHEREAS, the land and premises to be leased are not presently needed exclusively for highway purposes;

WHEREAS, WSDOT is granted authority to lease property under Ch. 47.12.120;

WHEREAS, WSDOT and the Lessee deem it to be in the best public interest to enter into this Lease;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED THAT:

1. PREMISES. WSDOT does hereby lease to the Lessee and Lessee does hereby lease from WSDOT that certain property in King County, State of Washington, and described as follows: 2.30 acres of property known as the "Old Colman School Playground" as shown shaded in yellow on Exhibit Roman Numeral I (which is attached hereto, and by this reference, is made a part hereof), the legal description for which is as follows:

Lots 1 through 18, inclusive and the alley between said lots, Block 1, Eureka Addition, according to the plat thereof recorded in Volume 16 of Plats, page 43, in King County, Washington;

TOGETHER WITH all that portion of 24th Avenue South as vacated by City of Seattle Ordinance Number 74959 lying between the westerly projection of the northerly and the southerly lines of said Block 1, and easterly of a line drawn at right angles to the L<sup>1</sup> Line Survey SR 90, Jct. SR 5 to W. Shore Mercer Island, Sec. 1, Jct. SR5 to Bradner Pl. So. that runs through Highway Engineer's Station (hereinafter referred to as HES) L<sup>1</sup> 71+87.59 on said L<sup>1</sup> Line;

FINAL (2/13/97)

Exhibit 3 to Open Space And Recreation  
Area I-90 Maintenance, Redevelopment  
And Land Conveyance Agreement

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The lands herein described contain an area of 2.30 Acres, more or less, the specific details concerning all of which are to be found within that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia and bearing date of approval February 29, 1980.

2. **EFFECTIVE DATE OF LEASE.** This Lease is effective upon its full execution by the parties hereto. Possession of the site by the Lessee will occur on April 1, 1998, unless another date is determined by mutual agreement.

3. **CONSIDERATION.** Upon possession by the Lessee and in lieu of the remittance of cash by the Lessee to the WSDOT as rent for the Premises, the WSDOT shall be entitled to a credit against a portion of the payment to be made by the WSDOT to the Lessee for the performance of landscape maintenance services under the separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement executed concurrent with this Lease by the parties hereto, which agreement, by this reference, is incorporated herein. The initial amount of such annual credit shall be Twenty-eight thousand five hundred five dollars (\$28,505).

The amount of the WSDOT's credit shall be redetermined five (5) years from the date of execution of this Lease, and in five (5) year increments thereafter. This amount shall reflect changes in comparable rents as identified in an appraisal conducted by WSDOT and shall be made in the following manner:

A. WSDOT shall give sixty (60) days written notice to the Lessee that a rent adjustment is being made. This notice shall include the amount of the adjusted rental rate and the date the new rate is to become effective.

B. If the Lessee does not agree with WSDOT's determination of fair market rental value rent, the Lessee will notify WSDOT within thirty (30) days of receipt of the rental increase notice and state its intention to either not continue the Lease or, at Lessee's expense, secure and submit to WSDOT a survey of comparable rents from an appraiser having at least three (3) years of experience as an appraiser of commercial property in Washington State. In making the rental appraisal the appraiser shall utilize comparable land rentals reflecting a highest and best use similar to that of the Premises. WSDOT shall in good faith consider the appraisal and, if deemed appropriate, revise the rental rate accordingly. In the event the Lessee fails to comply with the provisions of this paragraph, the rental rate initially proposed by WSDOT will be deemed accepted.

C. Within each such five (5) year period, the appraised market rental value of the Premises and resulting credit shall

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be adjusted annually in July of each year by multiplying the most recently established monthly rental and credit amount by seventy-five percent (75%) of the amount of the percentage change that occurred during the preceding calendar year in the U.S. Consumer Price Index for All Urban Consumers ("U.S.-CPI"), using the data as published by the Washington State Department of Revenue, Office of the Economic Forecast Council, or its successor; Provided, that in the event such index is discontinued, the parties hereto shall select and use for such adjustment purpose, another, similar index that reflects consumer price changes in the U.S.-CPI.

4. **TERM.** The term of this Lease shall be 20 years, or until termination of this Lease pursuant to the provisions herein, whichever comes first. If this Lease is still in effect at the expiration of 20 years, renewal of said Lease will be considered.

5. **NONAPPLICABILITY OF RELOCATION ASSISTANCE.** The Lessee acknowledges that the signing of this Lease does not entitle the Lessee to assistance under the Uniform Relocation and Real Property Acquisition Act (chapter 8.26 RCW).

6. **ENCUMBRANCES.** It is expressly understood that the Lessee shall not legally encumber the Premises.

7. **TAXES, UTILITIES AND ASSESSMENTS.** WSDOT shall arrange for the transfer of all billing accounts for utility services provided to the Premises from WSDOT's name to the Lessee's name effective on the date this Lease is executed, unless otherwise agreed to by the parties. The Lessee agrees to promptly pay all bills for utilities or other services supplied to the Premises. The Lessee shall pay that share of all assessments imposed on or with respect to the Premises that is the Lessee's obligation under RCW 79.44.010, and to also pay all taxes which may hereafter be levied or imposed upon the interest of the Lessee or by reason of this Lease.

8. **USE OF PREMISES.**

A. **General Requirements:** No use other than park and recreation use shall be permitted without the prior written approval of WSDOT. All grading and construction plans and any changes thereof are subject to the prior written approval by WSDOT. Furthermore, in using the Premises, it is expressly agreed that the Lessee shall comply with all applicable federal, state, and local laws, ordinances, regulations, and environmental requirements. The Lessee hereby agrees to indemnify, defend and hold WSDOT harmless from claims or suits resulting from the Lessee's failure to comply with such requirements.

B. **Flammable/Hazardous Substances:** Except as otherwise provided herein, the Lessee shall not store, bring or allow to

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be brought onto the Premises any toxic or hazardous substances as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Federal Superfund), 42 U.S.C. Section 9601 et seq., and the Washington Model Toxics Control Act (MTCA), RCW 70.105D et seq., or flammable substances including but not limited to explosives, petroleum products, paint, solvents and resins, without the express written permission of WSDOT.

WSDOT hereby grants permission for the Lessee to bring onto the Premises and to reasonably use toxic, hazardous or flammable substances that are regularly used on Lessee's property to carry out the Lessee's own park and recreation operation and maintenance objectives and functions or are otherwise deemed by the Lessee to be necessary or appropriate to carry out the Lessee's landscaping maintenance responsibilities under this Lease. Pesticides may be used by the Lessee for landscape maintenance in accordance with the manufacturer's directions at the Lessee's risk. The disposal of any and all toxic, hazardous, or flammable substances stored, brought on or allowed to be brought onto the Premises by the Lessee must be done in a legal manner by the Lessee.

Lessee hereby agrees to indemnify, defend and hold WSDOT harmless for any costs or liabilities associated with the removal or remediation of any hazardous, toxic or flammable substances including gasoline and other petroleum product, that has been released, or has otherwise come to be located on the Premises as a result of the activities of the Lessee and any of its agents, employees, contractors or the contractor's subcontractors. "Costs" shall include but not be limited to all response cost, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include but not be limited to the Comprehensive Environmental Response, Comprehensive, and Liability Act, 42 U.S.C. Section 9601; the Clean Water Act, 33 U.S.C. Section 1251; the Clean Air Act, 42 U.S.C. Section 7401; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; and the Washington Model Toxics Control Act, RCW 70.105D.010.

Lessee further agrees to retain any and all liabilities from the offsite disposal; handling, treatment, storage, or transportation of any toxic, hazardous or flammable substances, including petroleum products, removed from the Premises and that liabilities under this section (Flammable/Hazardous Substances) shall survive the expiration or termination of this Lease.

C. Special Events: The Lessee may issue permits for the presentation of special events or uses on the Premises provided that each such intended event meets the following

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minimum requirements and any other reasonable requirement deemed necessary by WSDOT:

- (1) The event or use does not affect or impact the traveled lanes or the operation of I-90 or its ramps, and is consistent with the park-like atmosphere intended for the Premises;
- (2) Ten percent (10%) of all event, use, permit or other fees collected by the City for allowing the event or activity on the Premises, and ten percent (10%) of the gross receipts for any commercial, money-making event sponsored by the Lessee or any other Lessee-authorized group on the Premises shall be applied as a credit against the money that is owed to the Lessee by the Lessor WSDOT for maintenance services under the separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto. Provided, that no payment percentage will be charged on event, use, permit or other fees that directly reimburse the Lessee for services provided by the Lessee that are directly associated with such event or activity (e.g. police services). The Lessee shall maintain adequate records of events, uses, fees, and gross receipts received in relation to said events or uses and shall provide said records to WSDOT within thirty (30) days after the end of said event or use;
- (3) The Lessee, in the case of a Lessee produced event, warrants that it is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the Lessee is not self-insured, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- (4) The Lessee-authorized group, in the case of other than Lessee produced events, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- (5) The Lessee, in the case of a Lessee produced event, agrees to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the special event activity;
- (6) The Lessee, in other than Lessee produced events, shall require the permittee to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the activities authorized by the permit;

- (7) The Lessee assumes responsibility for all clean up and repair of any damage resulting from the use or event.

9. UTILITIES, UTILITY FRANCHISES AND PERMITS. WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain existing facilities and, for itself, to grant utility franchises and/or permits across the Premises; Provided, that WSDOT shall require every utility franchise and permit holder issued a franchise or permit after the effective date of this Lease to provide to the Lessee's Superintendent of Parks & Recreation, except in an emergency, not less than forty-eight (48) hours prior written notice of any intent by such utility franchise or permit holder to enter upon the Premises, and in the event of an emergency, prior notice to such official by telephone at 206-684-8022, (or such other telephone number as may be designated by the Lessee by written notice to WSDOT) regarding such intended entry. The WSDOT shall require such entry, maintenance and installation to be accomplished in such a manner as to minimize any disruption to the Lessee. The WSDOT shall require all franchise/permit holders to restore paving, grading, landscaping and other improvements to the Premises that are damaged or destroyed by any such entry, installation or maintenance work by or for such utility franchisee or permittee to at least as good a condition as such paving, grading, landscaping and improvements were in immediately prior to the commencement of such franchisee's or permittee's entry or work.

The Lessee will not disturb markers installed by a franchise/permit holder. Prior to tilling of the soil or the undertaking of any other operation of the Lessee in which earth, rock, or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater, the Lessee must provide notice to all owners of underground facilities by calling 1-800-424-5555 (or such other telephone number as may be designated). Furthermore, the Lessee must comply with all provisions of Ch. 19.122 RCW relating to underground facilities. Violation of this statute is subject to a possible civil penalty.

10. IMPROVEMENTS.

- A. WSDOT shall not be required to make any improvements to or perform any maintenance or repairs upon any part of the Premises.
- B. WSDOT's Approval of Lessee's Plans for Design and Construction: The Lessee shall not be permitted to make any improvements to the Premises without the prior written approval of the WSDOT. The Lessee covenants that any regrading or improvements to be constructed on the Premises by the Lessee will not at any time during or after construction either damage, threaten to damage or

otherwise adversely affect any part or element of the highway facility under or immediately adjacent to the Premises or the operation thereof as then developed and used. The WSDOT shall be furnished with two sets of complete plans, details and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises by the Lessee, and no such work shall be done by the Lessee on the Premises without prior written approval of such plans by the WSDOT, which approval shall not be unreasonably withheld or delayed. All construction work by the Lessee shall be done in conformity with the plans and specifications as approved by the WSDOT. The WSDOT may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure compliance with the WSDOT-approved plans and specifications, protection of all parts and elements of the highway facility and compliance with WSDOT's construction and safety standards. The improvements shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and construction when necessary.

- C. **Liens.** Nothing in this Lease shall be deemed to make the Lessee the agent of WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. The Lessee acknowledges that WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the Lessee.

11. **PERSONAL PROPERTY.** WSDOT shall not be liable in any manner for, or on account of, any loss of damage sustained to any property of whatsoever kind stored, kept, used or maintained in or about the Premises, except for such claims or losses that are caused by WSDOT, its employees, or any of its authorized agents, contractors, or contractor's subcontractors.

12. **INSURANCE.** Lessee warrants that it is self-insured, and agrees to provide acceptable evidence in the form of a certification of its self-insured status to WSDOT or, if the Lessee is not self-insured, to secure liability insurance in the form and amount reasonably determined necessary by WSDOT; Provided, that WSDOT may reasonably adjust said coverage requirements from time to time based on risk factors and the adequacy of the stated policy limits.

13. **WSDOT'S RIGHT OF ENTRY AND INSPECTION.** The WSDOT, for itself, its agents and contractors and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for inspection purposes, including the inspection of any excavation, construction or maintenance work being done by the Lessee. Further, the WSDOT, for itself, its agents and

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contractors, and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for the purpose of maintenance, construction or reconstruction of the highway facility or any element thereof. Provided, No such entry, for the purpose of maintenance, construction or reconstruction shall occur without at least seven (7) days' prior written notice to the Lessee. In the event of an emergency only prior notice by telephone to Superintendent of Parks and Recreation at 206-684-8022 (or such other person or telephone number as may be designated by Lessee by written notice to WSDOT) shall be required.

The WSDOT shall in no way be responsible for any incidental or consequential damages due to loss of use by Lessee caused by any such entry.

In the event of any such entry, inspection, maintenance, construction or reconstruction of the highway facility or any element thereof by the WSDOT, or any of its agents, employees, contractors, or contractor's subcontractors, WSDOT shall ensure that such entry and work is performed in such a manner as to protect public safety and minimize any disruption to the Lessee. Following the completion of such inspection, maintenance, construction or reconstruction, any paving, grading, landscaping and other improvements on the Premises damaged by such entry, inspection, construction or reconstruction work shall be restored or repaired by or for the WSDOT to at least as good a condition as such paving, grading, landscaping and other improvements were in immediately prior to the commencement of such activity.

The parties expressly agree that nothing herein precludes any WSDOT employee, agent or contractor from using the Premises as a member of the general public.

14. **MAINTENANCE.** The Lessee shall perform or cause to be performed at the Lessee's expense all maintenance of the Premises which will include but is not limited to, fence maintenance, maintenance of the paved areas, control of noxious weeds, litter, dust, and erosion, and must keep the Premises in good condition, both as to safety and appearance, to the reasonable satisfaction of the WSDOT.

15. **HOLD HARMLESS.**

A. **Lessee's Indemnification:** The Lessee shall protect, save, hold harmless, and defend the WSDOT and its authorized agents, officers, and employees and the Federal Highway Administration from all claims, actions, costs, damages and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the Lessee, or any of its officers, agents, employees, licensees, invitees, contractors, or the contractor's subcontractors on the Premises under this Lease.

B. WSDOT's Indemnification: WSDOT shall protect, save, and hold harmless and defend the Lessee and its officers, employees, and authorized agents from all claims, actions, costs, damages, or expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of WSDOT related to activities reserved to the WSDOT, or any of its officers, agents, employees, contractors or the contractor's subcontractors on the Premises under this Lease.

C. Concurrent Negligence or Actions Covered by RCW 4.24.115: If the claims or damages are caused by or result from the concurrent negligence of (i) WSDOT, or any of its officers, agents, employees, contractors or contractor's subcontractors and (ii) the Lessee, or any of its officers, employees, licensees, invitees, agents, contractors or the contractor's subcontractors, or involves any action covered by RCW 4.24.115, a party's indemnification obligation hereunder shall be valid and enforceable only to the extent of the negligence of such party or any of its officers, agents, employees, licensees, invitees, contractors or the contractor's subcontractors, as appropriate.

16. **NONDISCRIMINATION.** The Lessee, for itself and its successors, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental, or physical handicap shall be unlawfully excluded from participation in, be unlawfully denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the Premises; that in connection with the construction of any improvement on said lands and the furnishing of services thereon, no such discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors; that such discrimination shall not be practiced against the public in their access to and use of the facility and service provided for public accommodation constructed or operated on, over, or under the space of the right of way; and that the Lessee shall use the Premises in compliance with all other requirements imposed pursuant to the Ch. 49.60 RCW and 49 CFR Part 21, and as said Regulations may be amended. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the Lessor to terminate this lease in accordance with the procedures set forth herein.

17. **DEFAULT.** Upon the material breach of this Lease by either party hereto, the other party may give to the party allegedly in breach notice specifying the nature of such breach, the period of time within which such breach must be cured, and at the option of the party giving such notice, such party's intention to declare a default and to terminate this Lease in the event such

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breach is not cured within the specified cure period. Neither party shall be in default unless it fails to perform an obligation required of it within the cure period, which time shall not extend more than thirty (30) days after the date of the notice of breach, except that if the nature of the obligation is such that more than thirty (30) days is required for performance or cure, then the party alleged in breach shall not be in default if such party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The non-defaulting party may in writing, at its option, extend the cure period if in the judgment of the non-breaching party, an extension is justified. After expiration of the cure period, and any extension thereof, if one or more defaults remains unremedied, this Lease shall terminate without further notice; and Provided, that if the breach is by the Lessee, WSDOT shall have the option of giving notice in writing of its intention to cure a non-emergent default or verbal notice if the default is deemed an emergency by the WSDOT, by itself or through use of agents or contractors. The Lessee agrees to reimburse WSDOT within thirty (30) days of the date of WSDOT's invoice for resultant direct costs WSDOT incurs in curing such default or, in the alternative, the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto in an amount equal to the cost incurred in curing the default.

**18. INTERRUPTION, TERMINATION, & PARTIAL TERMINATION.**

A. This Lease shall terminate upon termination of the Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement, unless the parties hereto amend this Lease in writing to provide for an alternative payment of rent to WSDOT;

B. Interruption: In the case of a transportation need not expected to last until the end of the term hereof, WSDOT shall have only the right to interrupt this Lease for the period of need, at the end of which WSDOT shall promptly restore the Premises to a physical condition that is equal or better than the condition it was in immediately prior to such interruption, and promptly thereafter shall restore use of the Premises to the Lessee. During any such period of interruption, Lessee shall have no responsibility or obligation hereunder to perform any maintenance work with respect to the area of the Premises that is affected by such interruption and the rent credit as provided in Section 3 hereof shall be adjusted downward for the period of interruption according to the following formula:

Adjusted Rent Credit =  $C \times (A \div 2.30) \times (N \div 365)$  where

"C" equals the amount of annual rent credit otherwise due to WSDOT pursuant to Section 3 of this Lease at the time of the WSDOT interruption;

"A" equals the amount of the Premises (in full and partial acres) made unavailable for the Lessee's use and occupancy because of the WSDOT interruption; and

"N" equals the number of days in each year during which the WSDOT interruption continues in effect (which days shall commence on the date specified in the WSDOT notice of interruption given pursuant to Section 27 of this Lease or the actual first date of such interruption, whichever is earlier, and shall end on the final date of such interruption, as specified in a WSDOT notice given pursuant to Section 27 of this Lease or the actual ending date of such interruption, whichever is later).

This subsection shall become operable upon the effective date of possession pursuant to Section 2 of this Lease.

C. Termination by WSDOT: WSDOT may terminate this Lease in whole or in part:

(1) Immediately, in the event the Premises is needed for an emergency transportation purpose;

(2) On 180 days' written notice, if the Premises is needed for a transportation need. If the transportation need does not, in WSDOT's determination, require terminating the use and occupancy rights with respect to all of the Premises, the Lessee may continue to lease the unaffected remainder of the Premises under the terms and conditions of this Lease;

(3) In the event that it becomes apparent, in WSDOT's sole judgment, that the Premises have ceased to be used or have been abandoned for a continuous period of sixty (60) days, WSDOT, at its option, shall have the right to terminate this Lease, provided due notice of such apparent default and WSDOT's intent to terminate this Lease shall be given to the Lessee not less than thirty (30) days prior to the proposed termination date together with a demand to cure such default within such thirty (30) day cure period.

(4) For default as provided herein.

D. Termination by Lessee for Default by WSDOT: The leasing of all of the Premises may be terminated by the Lessee, if the WSDOT has breached this Lease and, after WSDOT's receipt of notice of such breach, such breach has not been cured within the time period specified in Section 17 hereof. For purposes

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of termination under this provision, Lessee may declare any of the following a breach by the WSDOT, unless otherwise mutually agreed to:

(1) The interruption of the Lessee's use and occupancy of the Premises or a portion thereof for a period of more than one year;

(2) The adoption of any policy or regulation by WSDOT that makes the maintenance of the Premises or any portion thereof unreasonably difficult or expensive or the use and occupancy of the Premises or any portion thereof economically or operationally unreasonable or unacceptable to the Lessee or that unreasonably limits or restricts the occupancy or uses as allowed under this Lease of the Premises; and

(3) The failure of the Lessor to indemnify the Lessee as provided elsewhere herein.

**19. SURRENDER UPON TERMINATION.**

A. Except as otherwise provided herein, upon termination or expiration of this Lease, the Lessee shall cease its operation on and/or use of the affected Premises. In the event the Lessee fails to vacate the Premises on the date of termination or expiration, it shall be liable for any and all costs to WSDOT arising from such failure.

**B. Condition of Property Upon Surrender:**

(1) Prior to termination for convenience by the Lessee, or termination for a Lessee default where the Lessee has not made diligent efforts to cure the default, or expiration of this Lease, the Lessee shall remove from the Premises, at no cost or expense to the WSDOT, all improvements, trade fixtures, equipment, furnishings, and other personal property owned and/or placed in or on the Premises by the Lessee and restore the same to as good or better condition as it was in prior to the execution of this Lease, reasonable wear and tear excepted, unless the parties agree in writing otherwise. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to the WSDOT.

(2) In the event the Lease is terminated by WSDOT because of a Lessee default and the Lessee has diligently attempted to cure the default within the cure period but was unable to do so, the Lessee shall be granted a 120 day permit to enter upon the affected Premises to at its expense remove all improvements and restore the same to

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as good or better condition as it was in prior to the execution of this Lease, reasonable wear and tear excepted, unless the parties agree in writing otherwise. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to WSDOT. Further, Lessee hereby agrees to retain all liability and to protect, save, and hold harmless and defend WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of the acts or omissions of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors or any persons whomsoever on the Premises for which the improvement is located until said removal and restoration is complete. The liability and indemnification obligations contained in this section shall survive the expiration or termination of this Lease.

(3) In the event the Lease is terminated by WSDOT for a transportation need or for convenience, or by the Lessee for a WSDOT default as provided elsewhere herein, the Lessee is not obligated to remove improvements, trade fixtures, equipment, furnishings and other personal property from the Premises, but shall have the right to remove Lessee's items it desires prior to the effective termination date. With any such removal, Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to the WSDOT, unless the parties mutually agree otherwise.

C. Disposition of Unremoved Improvements and Property: In the event that the Lessee has not removed its improvements, trade fixtures, equipment, furnishings, and other personal property, upon termination or expiration of this Lease or as otherwise required herein, the improvements and property shall become the property of the WSDOT and WSDOT may dispose of the property and improvements at Lessee's expense in a manner prescribed by the WSDOT and the Lessee shall reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such removal and disposal within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in removing and disposing of the improvements and property; Provided, further that this

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provision does not apply where termination is as provided in paragraph 19.B(3).

D. **Failure to Restore the Premises:** In the event the Lessee fails to restore the portion of the Premises to be surrendered to as good or better condition as it was in prior to the execution of this Lease, reasonable wear and tear excepted, or as otherwise agreed to by parties in writing, upon termination or expiration of this Lease, or as otherwise provided herein, the WSDOT may restore said Premises at Lessee's expense and the Lessee will reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such restoration within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in restoring the property; Provided, further that this provision does not apply where termination is as provided in paragraph 19B(3).

20. **ASSIGNMENTS, SUBLEASES & SUBCONTRACTS.** The Lessee shall not assign this Lease or sublet any part of the Premises without WSDOT's prior written consent. The Lessee covenants that this Lease is entered into as a principal and that the Lessee is not acting for any undisclosed principal. Nothing herein shall prohibit the Lessee from contracting with a third party to perform the maintenance work agreed to herein with the prior written approval of WSDOT, which approval shall not be unreasonably withheld. Any such contract shall not relieve the Lessee of its obligation to maintain the Premises as agreed herein.

21. **MODIFICATIONS.** This instrument contains all the agreements and conditions made between the parties hereto pertaining to the leasing of the Premises, and may not be modified orally or in any other manner other than by an agreement in writing signed by all parties hereto.

22. **WAIVERS.** The receipt by WSDOT of Premises maintenance services, with knowledge of any breach of this Lease by the Lessee, or of any default on the part of the Lessee in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to a waiver of any provision of this Lease. No failure on the part of either party to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by either party, unless in writing, shall discharge or invalidate such covenant or provision or affect the right of such party to enforce the same in the event of any subsequent breach or default.

23. **CUMULATIVE REMEDIES.** All remedies available at law or in equity to either party for breach of this Lease are cumulative and may be exercised concurrently or separately, and the exercise

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of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

24. **TOTALITY OF AGREEMENT.** It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by either party hereto except those that are expressed in this Lease.

25. **BINDING AGREEMENT.** This Lease shall not be valid and binding upon Lessor unless and until accepted and approved by the Secretary of Transportation or his duly authorized representative.

26. **INTERPRETATION.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this lease are for convenience only, and shall have no effect on the construction or interpretation of any part hereof.

27. **NOTICES.** Except as provided elsewhere herein, wherever in this Lease a written notice is to be given or made, it shall be sent by certified mail, postage prepaid addressed to the intended recipient at the respective address shown herein, or personally served on the party at the address listed below, unless such recipient has specified a different address by prior written notice sent to the other party hereto:

TO WSDOT:	PROPERTY MANAGEMENT SUPERVISOR DEPARTMENT OF TRANSPORTATION Mail Stop 7338 P. O. Box 4 7338 Olympia, WA 98504-7338
COPY TO:	Northwest Region Maintenance Engineer DEPARTMENT OF TRANSPORTATION P.O. Box 330310 15700 Dayton Avenue North Seattle, WA 98133-9710
TO LESSEE:	Superintendent of Parks & Recreation THE CITY OF SEATTLE Administration Building 100 Dexter Avenue North Seattle, WA 98109

Said notices shall be effective upon receipt of notices in the manner described above.

28. **RESTRICTION.** In accordance with Agreement GC8704, dated December 1, 1989, between the State of Washington and Seattle School District No. 1, (attached hereto as Exhibit Roman Numeral II) the Premises is subject to a restriction that it will not be used for school purposes. Nothing in this Lease or Agreement GC8704 restricts or prohibits use of the Premises by the Lessee for

FINAL (2/13/97)

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the providing of instruction in games, sports, arts and crafts, or similar and normal park and recreation functions or activities.

29. **NEGOTIATED AGREEMENT.** The parties to this Lease acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, the parties hereto have had their respective representatives sign their names in the spaces below:

Dated: \_\_\_\_\_

THE CITY OF SEATTLE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
(Name and title of WSDOT)

APPROVED AS TO FORM ONLY:

February 13, 1997  
By: Royce Brown  
Assistant Attorney General

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STATE OF WASHINGTON )

COUNTY OF )

) ss. (WSDOT ACKNOWLEDGMENT)

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, to me known to be the duly appointed Director, Real Estate Services, Washington State Department of Transportation, who stated, on oath, that \_\_\_\_\_ executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein set forth, and that \_\_\_\_\_ was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name of notary)  
Notary Public in and for the State Washington,  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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STATE OF WASHINGTON )

) ss.

(CITY ACKNOWLEDGMENT)

THE COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_

\_\_\_\_\_ to me known to be the \_\_\_\_\_ of The City of Seattle, who on oath stated that \_\_\_\_\_ executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes herein mentioned, and that \_\_\_\_\_ was authorized to execute the said instrument for and on behalf of The City of Seattle.

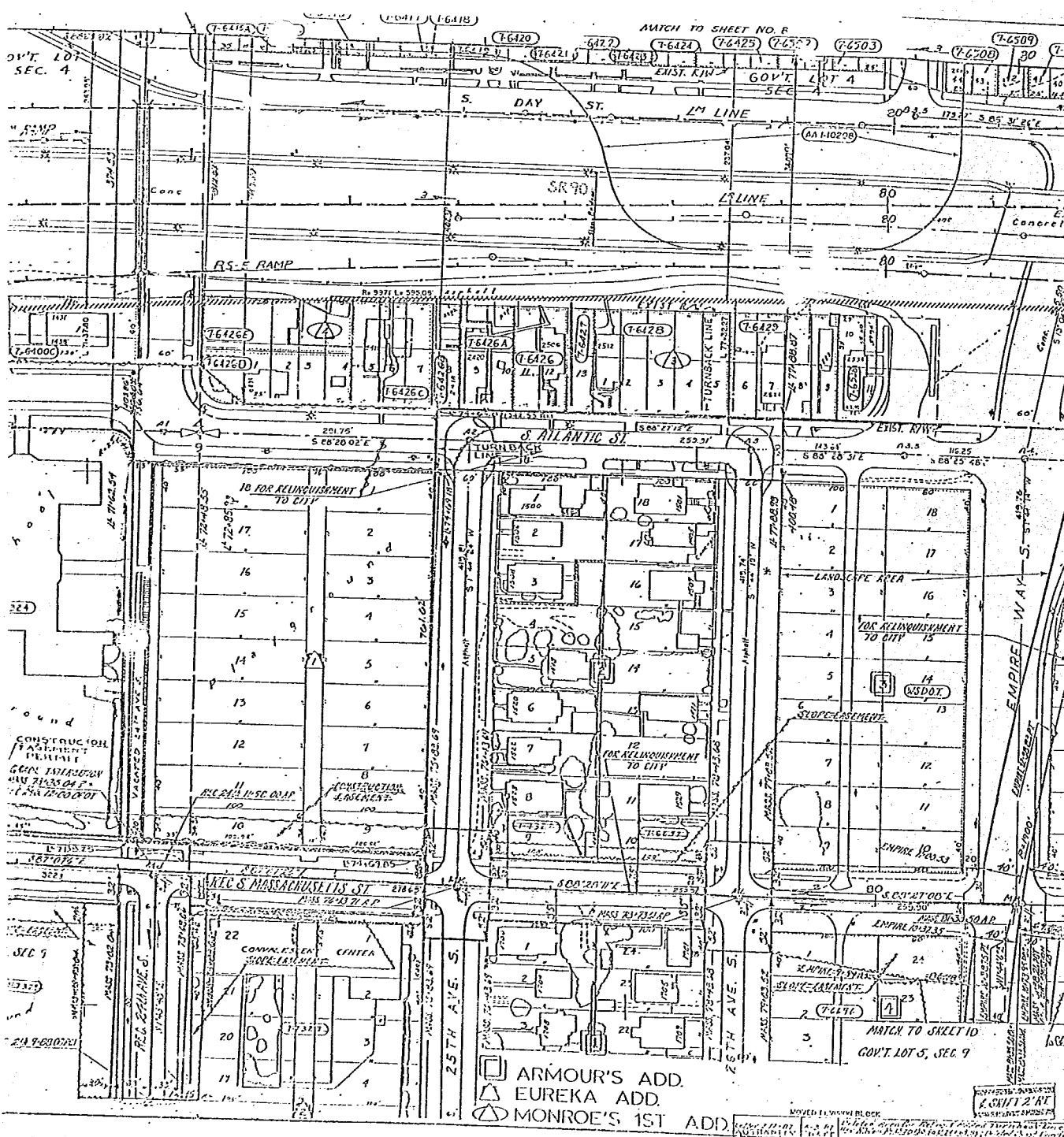
WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name of notary)

Notary Public in and for the State Washington,  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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ARMOUR'S ADD.  
EUREKA ADD.  
MONROE'S 1ST ADD.

MATCH TO SHEET 10  
GOV'T LOT 5, SEC. 9

GOV'T LOT 5, SEC. 9



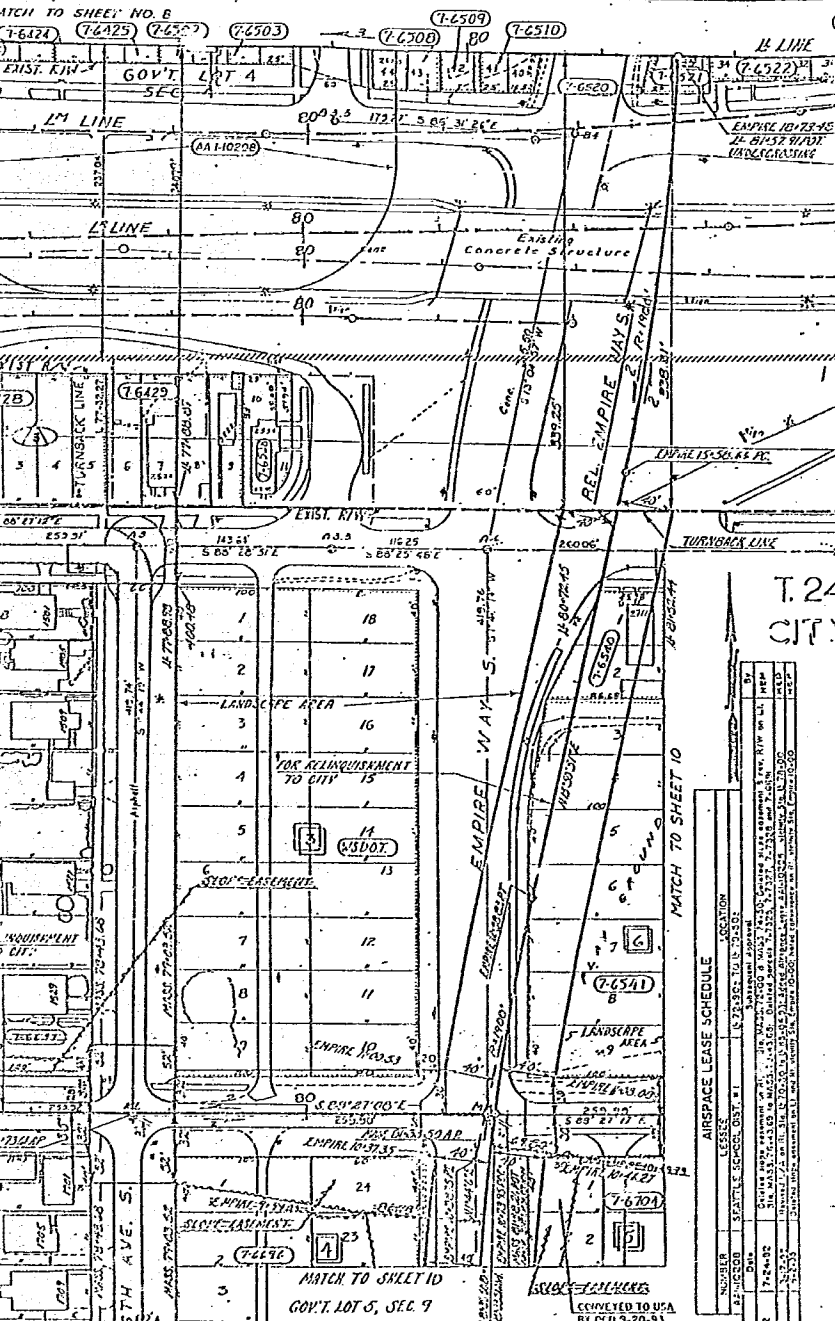


EXHIBIT "I"	
C.S.	SR 90
GROUND LEASE	
RA-1-10542	IC:1-17-05677
AGREEMENT NO.	13 FEB 1980
SHEET 1 OF 1 SHEETS	19
SCALE 1 IN. = 50 FT.	

T.24N. R.4E. W.M.  
CITY OF SEATTLE

#### ACCESS NOTES:

- Non-motorized traffic will be permitted to cross the limited access control and highway facility on pedestrian and bicycle trails as provided.
- Traffic movement will be permitted over the highway structures at Relocated Empire Way South.

#### NOTE:

- For Ownership Data, see sheet No. 14
- For legend see sheet 6.
- For Total Parcel Details, see sheet 1.

This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 3, 1971, as revised by the Board of Review Findings and Order issued March 26, 1973, and to provisions of the Memorandum Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Department of Transportation.

Designated for Limited Access Control by Comm. Res. No. 95, July 23, 1953

15311  
SR 90 MP 0.18 TO MP 1.33  
JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 1, JCT. SR 5 TO BRADNER PLACE S.  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
STA. 11+00 TO STA. 11+85+00.93

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

OLYMPIA, WASHINGTON

W. A. BULLEY

SECRETARY



A. M. Anderson  
DESIGN ENGINEER

DATE FEB. 25, 1980

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AGREEMENT GC 8704  
FEDERAL AID NO. I-90-1( )  
COLMAN SCHOOL REPLACEMENT  
PHASE 2, CONSTRUCTION

(Rev. 9/15/89)

THIS AGREEMENT is made and entered into this 1st day of December, 1989 between the State of Washington, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter referred to as the "State", and Seattle School District NO. 1, located at 815 Fourth Avenue North, Seattle, Washington 98109, hereinafter referred to as the "District".

WHEREAS, the State, pursuant to RCW 47.52.180, was directed to:

1. Reimburse the District for the costs of providing an alternate site for a school and playground of equivalent utility to the present site;
2. Reimburse the District for the replacement cost of a new school building of equivalent utility to the present Colman School; and
3. Reimburse the District for the cost of outfitting the school with furniture and equipment suitable to the new school building to the extent that such costs are eligible for participation by the Federal Highway Administration, hereinafter referred to as the "FHWA" (generally the cost of furniture or equipment permanently attached or dedicated to the new school building will be considered for eligibility); and

EXHIBIT II

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WHEREAS, the District has submitted to the State its plans showing the site selected for the new school and playground, the specifications and estimated costs for designing, constructing, and furnishing a new school; and

WHEREAS, the District has already incurred substantial costs associated with the environmental, site selection, preliminary engineering, and plans, specification and estimates processes with the intent of entering into a further agreement for construction with the State; and

WHEREAS, it is deemed to be in the best public interest for the District to proceed with the Phase 2 construction for the facility at this time; and

WHEREAS, the District and State have entered into a Possession and Use Agreement and a Construction Permit providing for the State's use of a portion of the present Colman School site;

NOW THEREFORE, in consideration of the terms, covenants and performance contained herein, or attached and incorporated and made part thereof,

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IT IS MUTUALLY AGREED AS FOLLOWS:

I.

GENERAL

The District shall furnish the labor, materials, equipment and tools required for Phase 2 construction of a new Colman School, as described in Exhibit "A" attached hereto, and by this reference made a part of this Agreement.

The District shall perform, control and manage the work in accordance with the District's A & E Monitoring guidelines.

The State and FHWA shall have the right to review the work in progress and take samples of materials to be included in the construction of the school facility.

The State concurs with the use of the consulting firms of TRA and Mahlum and Nordfors under their existing continuing contracts.

The District shall not enter into any additional contracts for the performance of any work under this agreement without written permission of the State. It is recognized that the State is not a party to any work or contract that may be entered into by the District and third parties to complete the work and the State's obligation is solely for the reimbursement of costs and conveyance of property interests consistent with the terms of this Agreement.

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The District agrees that the old Colman building and site will not be used for school purposes. A violation of this provision shall be deemed a material breach of this Agreement and will entitle the State to all remedies available to it including the right to enjoin such usage. The District consents to entry of an injunction in the event of District violation of this provision.

The State shall furnish the land for the site of the new Colman School in accordance with Paragraph VII.A and B.

## II

### DESCRIPTION OF WORK

The work of this Agreement consists of construction administration, payment to contractors, sales tax, contingencies, inspection, testing, and other related work.

## III.

### TRANSFER OF TITLE OF OLD COLMAN SCHOOL PROPERTY

Prior to award of the contract for construction of the new Colman School, the District shall convey clear title to that portion of the old Colman property needed for I-90 right-of-way and other areas now used by the State under its Possession and Use Agreement (approximately 114,447 square feet).

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IV.

TIME FOR BEGINNING AND COMPLETION

The District shall not begin any work under the terms of this Agreement until authorized in writing by the State. All work under the Agreement shall be completed within 430 days after contract award by the District.

The established completion time shall not be extended because of any delays attributable to the District, but may be extended by the State, in event of delay attributable to the State, or because of unavoidable delays caused by an act of God or governmental actions or other conditions beyond the control of the District. A supplemental agreement, issued by the State, is required prior to extending the established completion date.

V.

CHANGE ORDERS

All change orders shall be submitted to the State for approval prior to the District authorizing the contractor to start the work. The State shall expeditiously review such change orders.

VI.

MATERIALS CERTIFICATION

The District shall submit to the State a certification that materials and construction operations controlled by sampling and testing were in conformance with the contract documents. Said

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certification shall be signed by the responsible District official and submitted to the State prior to requesting final payment.

VII.

TERMINATION OF STATE OBLIGATION

It is understood and agreed that within 90 days after final payment the State will:

- A. Execute a mutual benefits Quit Claim Deed conveying to the District fee title in and to those lands outlined in pink on the attached Exhibit "C".
- B. Execute a mutual benefits Airspace Lease covering those areas outlined in green on the attached Exhibit "C" on such terms and conditions as determined by the State. Said Airspace Lease will be effective only so long as said property is used in conjunction with a public school located on the property described in A above.

The State's obligation to replace Colman School shall be considered complete upon final payment thereof by the State and execution of the necessary documents conveying title to the land and airspace lease for the new school; whichever occurs last.

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VIII.

PAYMENT

The State in consideration of faithful performance of the work to be done by the District agrees to pay the District seventy-five percent (75%) of the actual direct and related indirect cost, Four Million Eight Hundred Fifty Thousand Dollars (\$4,850,000) of performing the work, less Three Hundred Twenty Five Thousand Dollars (\$325,000) the agreed value of that portion of the old Colman property retained by the District. The maximum amount payable, by the State to the District under this Agreement, shall not exceed Four Million Five Hundred Twenty Five Thousand Dollars (\$4,525,000.00) unless a supplemental agreement has been negotiated and executed by the State prior to the State's incurring responsibility for any costs in excess of the aforesaid maximum amount payable. The credit to the State, Three Hundred Twenty Five Thousand Dollars (\$325,000), for that portion of the old Colman School property retained by the District shall be deducted from the monthly progress payments submitted by the District. Such deduction(s) shall begin with the first monthly progress payment and subsequent payments, if required, to satisfy this requirement. An itemized estimate of cost for work to be performed by the District and to be reimbursed by the State (subject to the deduction provided for in the previous sentence) marked Exhibit "B" is attached hereto, and by this reference made a part of this Agreement. Such payment shall be full compensation for the replacement cost of the new Colman School.

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A. Monthly Progress Payments

Partial payments may be made upon request of the District to reimburse costs incurred, and are not to be more frequent than one per month. It is agreed that payment of any partial claim will not constitute agreement by the State as to the appropriateness of any item or assumption of any other responsibility or liability, and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment or underpayment by either party, the parties agree to make such adjustment as required by final audit, not to exceed the maximum amount payable under this Agreement. Either party may resort to other available remedies in the event of dispute over any audit results.

B. Final Payment

The District shall submit a final billing to the State within 90 calendar days following completion of the work involved. The District will maintain sufficient accounting records to clearly distinguish between the Colman School replacement costs that are eligible for FHWA participation and other elements of the District's Phase 1 Capital Improvement Program.

C. Accounting Methods/Inspection of Cost Records

The District and its consultants shall keep available for inspection by representatives of the State and United States,

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for a period of three years after final payment, the cost records and accounts pertaining to this Agreement.

If any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed. Cost records shall be maintained in accordance with a work order accounting procedure as prescribed by the Division of Municipal Corporations of the State Auditors Office.

#### IX.

#### AUTHORITY TO BEGIN WORK

The District agrees that any cost incurred prior to the execution of this Agreement and receipt of written notice to proceed by the STATE shall not be eligible for reimbursement under this Agreement.

#### X.

#### DISPUTES

Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the District and the State shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this Agreement, except as provided in VIII.A and XI hereof.

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XI.

VENUE

In the event that either party is required to institute legal action or proceedings to enforce any of its rights in this Agreement, both parties agree that any such action shall be brought in the Superior Court of the State of Washington, situated in Thurston County.

XII.

LEGAL RELATIONS

The District shall comply with all federal, state and local laws and ordinances applicable to the work of this Agreement. This contract shall be interpreted and construed in accordance with the laws of Washington.

District, its successors or assigns, will protect, save and hold harmless the State, its authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the District, its assigns, agents, contractors, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement. The District further agrees to defend the State, its agents or employees in any litigation, including payment of any costs or attorney's fees, for any claims or action commenced, thereon arising out of or in connection with acts or activities authorized by this Agreement. This obligation shall not include such claims, costs, damages or expenses which may be caused by

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the sole negligence of the State or its authorized agents or employees; Provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the District, its agents or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the District or District's agents or employees.

No liability shall attach to the State or the District by reason of entering into this Agreement except as expressly provided herein.

#### XIII.

##### EXTRA WORK

The State may authorize the District to perform work or render services in addition to or other than work provided by this Agreement. Such work will be considered as Extra Work and will be specified in a supplement to this Agreement which will set forth the nature and scope of the additional work and payment thereof. Work under a supplemental agreement shall not proceed unless and until authorized in writing by the State. Additional work ordered by the District without the State's prior approval will be done at the expense of the District.

#### XIV.

##### BOARD OF REVIEW FINDINGS AND ORDER AND STIPULATION

The Board of Review's findings and order and stipulation contained therein shall be deemed modified and superseded by the terms of this Agreement to the extent the terms herein are inconsistent with such findings and order and stipulation.

IN WITNESS WHEREOF, the parties hereto have executed this  
AGREEMENT as of the day and year first above written.

SEATTLE SCHOOL DISTRICT NO. 1

By William Schubert

Title Superintendent

Date October 30, 1989

APPROVED AS TO FORM

Date November 2, 1989

By Madame Justice

Assistant Attorney General

STATE OF WASHINGTON

DEPARTMENT OF TRANSPORTATION

By Dennis B. Ingham

Title Dennis B. Ingham  
Assistant Secretary For  
Program Development

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EXHIBIT "A"

COLMAN SCHOOL REPLACEMENT

A. PRELIMINARY ENGINEERING

1. Investigation and Schematic Design	\$75,000
2. Administration(School District)	12,000
3. Reimbursable	0

Total Preliminary Engineering(Paid under GC 8243)	<u>\$87,000</u>
---	-----------------

B. PHASE 1, PLANS, SPECIFICATIONS, & ESTIMATES(PS&E)	<u>\$468,285</u>
--	------------------

C. PHASE 2, CONSTRUCTION	<u>\$6,462,933</u>
--------------------------	--------------------

TOTAL ESTIMATED COLMAN SCHOOL REPLACEMENT COST	<u>\$7,018,218</u>
--	--------------------

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# EXHIBIT "B"

Cost breakdown by activity for work to be completed under Phase 1, PS&E:

## I. Contract Documents/Advertise and Award

- Design Development	\$ 70,000
- Contract Documents	133,000
- Advertise and Award	14,000
- Engineering for Street Reconstruction	25,000
- Value Engineering	16,000
- Energy Evaluation	17,500
- Soils	25,000
- Surveying	15,000
- Permits	63,500
- Transportation Study	5,000
<b>SUB TOTAL</b>	<b><u>\$384,000</u></b>

## II. Administration(School District)

- Project Manager: .5 x 9 mos x \$4873/mo	\$21,929
- Project Coordinator: 1 x 9 mos x \$3714/mo	33,426
- Planner: .2 x 9 mos x \$3636/mo	6,509
- Secretary: .1 x 9 mos x \$2400/mo	2,160
- Accountant: .25 x 9 mos x \$2338/mo	5,261
<b>SUB TOTAL</b>	<b><u>\$69,285</u></b>

Reimbursables(Printing) 15,000

TOTAL ESTIMATED PHASE 1, PS&E COST \$468,285

STATE PORTION (.75 X \$468,285) = \$351,213.75

DISTRICT PORTION (.25 X \$468,285) = \$117,071.25

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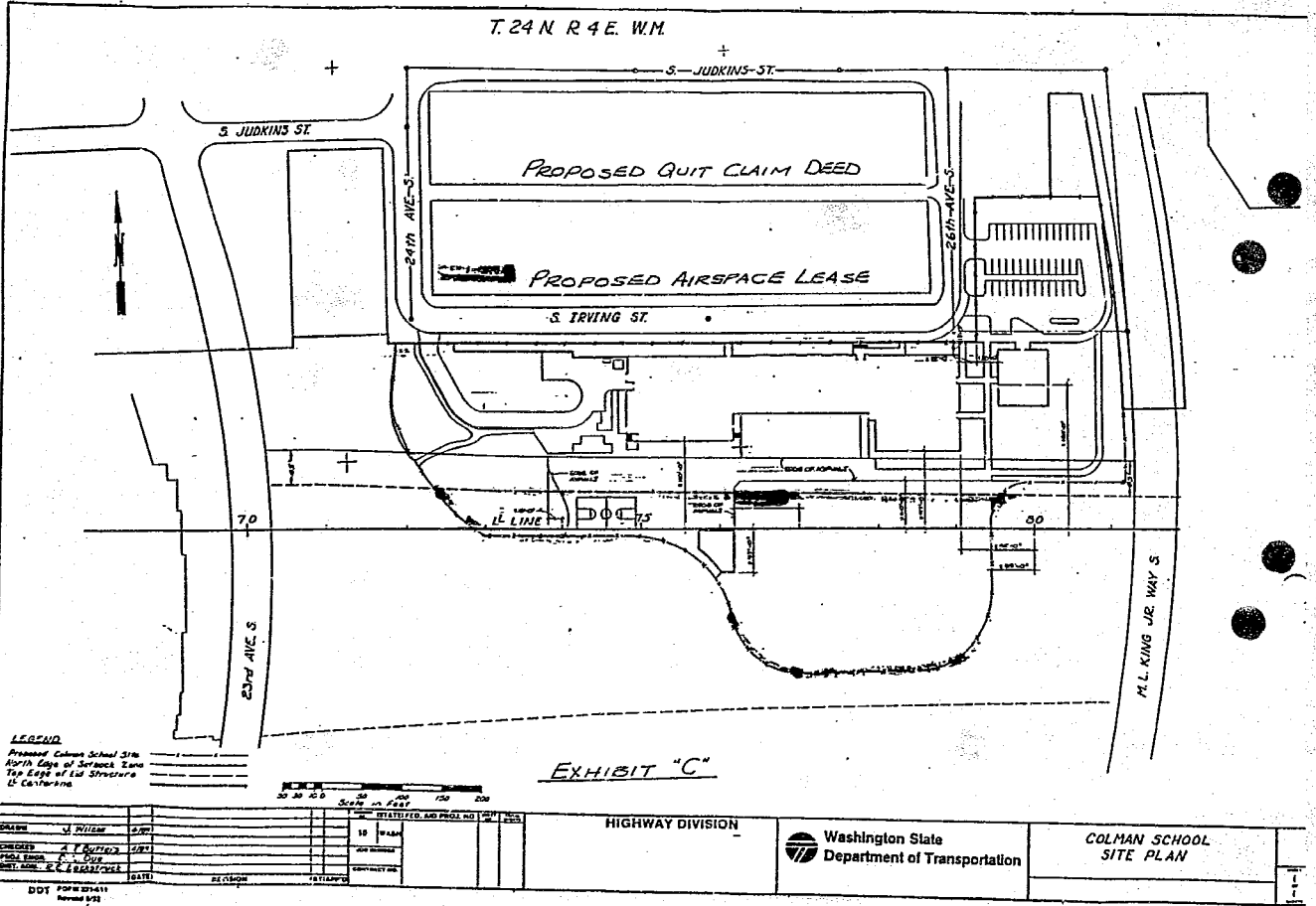
EXHIBIT "B" (continued)

Cost breakdown by activity for work to be completed under Phase 2,  
CONSTRUCTION:

Estimated construction cost	\$5,481,900
8.1% Washington State Sales Tax	444,034
Sub-total	\$5,925,934
5.00% Contingencies	<u>296,297</u>
Sub-total	<u>\$6,222,231</u>
Construction Administration(Consultants)	<u>\$70,000</u>
Inspection/Testing	<u>\$25,000</u>
Construction Administration(School District)	
- Project Manager: .5 x 14 mos x \$4873/mo	\$34,111
- Project Coordinator: 1 x 14 mos x \$3714/mo	51,996
- Construction Specialist: 1 x 14 mos x \$2718/mo	38,052
- Accountant: .25 x 14 mos x \$2338/mo	8,183
- Secretary: .1 x 14 mos x \$2400/mo	<u>3,360</u>
Sub-total	\$135,702
Reimbursables(Printing)	10,000
TOTAL ESTIMATED PHASE 2 CONSTRUCTION COST	<u>\$6,462,933</u>
STATE PORTION (\$6,462,933 x .75 - \$325,000)	<u>= \$4,522,200</u>
DISTRICT PORTION (\$6,462,933 x .25 + \$325,000)	<u>= \$1,940,733</u>

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ACTIVE RECREATION AREAS

AA-1-10546  
IC:1-17-05680

AIRSPACE LEASE

THIS IS A LEASE entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, hereinafter called the "WSDOT," and THE CITY OF SEATTLE, hereinafter called the "Lessee".

WHEREAS, the land and premises hereinafter described to be leased to the Lessee are not presently needed exclusively for highway purposes; AND WHEREAS, the WSDOT is granted authority to lease property under RCW 47.12.120; AND WHEREAS, the WSDOT and Lessee deem it to be in the best public interest to enter into this lease; AND WHEREAS, Lessee acknowledges that the WSDOT would not have entered into this Lease and agreed to allow the Lessee to develop the Premises for active recreation except for Lessee's promise to maintain the Premises at Lessee's expense;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances described herein, IT IS MUTUALLY AGREED THAT:

1. **PREMISES.** The WSDOT does hereby lease to the Lessee and the Lessee does hereby lease from WSDOT the following areas collectively comprising approximately 5.18 Acres:

Sturgus Artwork (Parcel A, Exhibit "A", Sheet 1 of 7)  
Atlantic Street Park (Parcel B, Exhibit "A", Sheet 2 of 7)  
Proposed Tennis Courts (Parcel C, Exhibit "A", Sheet 3 of 7)  
Existing and Proposed Basketball Courts (Parcel D, Exhibit "A", Sheet 3 of 7)  
Tract 37 Screening Fence (Parcel E, Exhibit "A", Sheet 4 of 7)  
Sportsfield (Parcel F, Exhibit "A", Sheet 5 of 7)  
Urban Peace Circle (Parcel G, Exhibit "A", Sheet 5 of 7)  
Existing Tennis Courts (Parcel H, Exhibit "A", Sheets 5 & 6 of 7)  
Children's Play Area (Parcel I, Exhibit "A", Sheet 6 of 7)  
East Portal Mt. Baker Ridge Viewpoint (on Lake Washington Blvd. South) (Parcel J, Exhibit "A", Sheet 7 of 7)

FINAL (2/13/97)

Exhibit 4 to Open Space And Recreation  
Area I-90 Maintenance, Redevelopment  
And Land Conveyance Agreement

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all of which are and shall be identified by blue shading on Exhibit "A," which is attached hereto and by this reference incorporated the "Premises". The Premises is legally described in Exhibit "B" attached hereto and by this reference incorporated herein.

2. **TERM.** The term of this Lease shall commence on the date it is fully executed and shall continue in full force and effect thereafter for a period of 20 years or until terminated pursuant to the provisions herein, whichever is the earlier. The Lessee shall have the option of continuing its tenancy of the Premises for additional twenty (20) year terms; Provided, that at the time the renewal is scheduled to commence, the Lessee is in substantial compliance with all the terms and conditions of this Lease.

3. **SIGNAGE.** Within ninety days after the commencement of this Lease, Lessee, at its expense, shall erect and maintain permanent signs approved by WSDOT as to quantity, location, and design, which approval shall not be withheld unreasonably, stating as follows:

"This public park is located on highway right of way under an agreement between The City of Seattle and the Washington State Department of Transportation."

4. **CONSIDERATION.** The Lessee's assumption of maintenance responsibilities for the Premises as specified herein serves as consideration for this Lease.

5. **NONAPPLICABILITY OF RELOCATION ASSISTANCE.** The Lessee acknowledges that the signing of this Lease does not entitle the Lessee to assistance under the Uniform Relocation and Real Property Acquisition Act (chapter 8.26 RCW).

6. **USE OF PREMISES.**

a. **Use Authorized By WSDOT:** No use other than the maintenance and operation of the Premises for active recreation purposes including but not limited to tennis courts, sportsfields, playgrounds, basketball courts, picnic tables and benches, art works, viewpoints, and other similar uses or for the fenced screening of Tract 37 shall be permitted without the prior written approval of the WSDOT. In using the Premises, the Lessee shall comply with all policies and regulations heretofore or hereafter promulgated by the Department of Transportation relative to the safety of the motoring public and the highway facility that are transmitted, in writing, to the Lessee not less than thirty (30) days prior to the date the Lessee is obligated to comply with the same (except for emergency policies and regulations, which shall be effective immediately upon their adoption and the receipt by the Lessee of the text thereof and notice from the WSDOT of its emergency adoption of the same).

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b. Compliance With Law: In using the Premises, it is expressly agreed that Lessee must comply with all applicable federal, state and local laws, ordinances, and regulations, including environmental requirements that are in force or that may hereafter be in force, and shall secure all necessary permits and licenses. Direct access to ramps or traveled lanes of limited access highways is not permitted.

c. Flammable/Hazardous Substances: Except as otherwise provided herein, the Lessee shall not store, bring or allow to be brought onto the Premises any toxic or hazardous substances as defined under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or Federal Superfund) (42 U.S.C. § 9601 et seq.), and the Washington Model Toxics Control Act (MCTA), RCW 70.105D et seq., or flammable substances, which flammable substances include but are not limited to explosives, petroleum products, paint, solvents, and resins, without the express written permission of WSDOT.

WSDOT hereby grants permission for the Lessee to bring onto the Premises and to reasonably use toxic, hazardous or flammable substances that are regularly used on Lessee's property to carry out the Lessee's own park and recreation operation and maintenance objectives and functions or are otherwise deemed by the Lessee to be necessary or appropriate to carry out the Lessee's landscaping maintenance responsibilities under this Lease. Pesticides may be used for landscape maintenance in accordance with manufacturer's directions at the Lessee's risk. Disposal of any and all toxic, hazardous, or flammable substances stored, brought on or allowed to be brought onto the Premises by the Lessee shall be done in a legal manner by Lessee.

Lessee hereby agrees to indemnify, defend and hold WSDOT harmless for any costs or liabilities associated with the removal or remediation of any hazardous, toxic or flammable substance, including gasoline or other petroleum product, that has been released or otherwise has come to be located upon the Premises by the activities of the Lessee, and any of its employees, agents, licensees, contractors, or the contractor's subcontractors. "Costs" shall include but not be limited to all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include but not be limited to the Comprehensive Environmental Response, Comprehensive, and Liability Act, 42 U.S.C. Section 9601; the Clean Water Act, 33 U.S.C. Section 1251; the Clean Air Act, 42 U.S.C. Section 7401; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; and the Washington Model Toxics Control Act, RCW 70.105D.010.

Lessee further agrees to retain any and all liabilities from the offsite disposal, handling, treatment, storage, or

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transportation of any toxic, hazardous or flammable substances, including petroleum products, removed from the Premises and that liabilities under this section (Flammable/Hazardous Substances) shall survive the expiration or termination of this Lease.

d. Signage, Display Lighting, Advertising & Fencing: Signs, display lights, and advertising media/materials are not permitted unless completely detailed on a separate plan sheet and have received specific prior written approval by WSDOT. Fences in place at the time of execution of this Lease or placed on the Premises by the Lessee, with the concurrence of WSDOT, and the Tract 37 Screening Fence will be maintained by the Lessee for the duration of the Lease. Nothing is to be attached to any fence by the Lessee without prior written approval by WSDOT.

e. Special Events: The Lessee may issue permits for the presentation of special events or uses on the Premises provided that WSDOT is given 10 days prior written notice describing the event and each such intended event meets the following minimum requirements and any other reasonable requirement deemed necessary by WSDOT:

(1) The event or use does not affect or impact the traveled lanes or the operation of I-90 or its ramps, and is consistent with the park-like atmosphere intended for the Premises;

(2) The event does not exceed the structural loading limits of the design of the I-90 "lid" for live loads;

(3) Ten percent (10%) of all event, use, permit or other fees collected by the Lessee for allowing the event or activity on the Premises, and ten percent (10%) of the gross receipts for any commercial, money-making event sponsored by the Lessee or any other Lessee-authorized group on the Premises shall be applied as a credit against the money that is owed to the Lessee by the WSDOT for maintenance services under the separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, which by this reference is incorporated herein; Provided, that no payment percentage will be charged on event, use, permit or other fees that directly reimburse the Lessee for services provided by the Lessee that are directly associated with such event, use or activity (e.g. police services). The Lessee shall maintain adequate records of events, uses, fees, and gross receipts received in relation to said events or uses and shall provide said records to the WSDOT within thirty (30) days after the end of said event or use;

(4) The Lessee, in the case of a Lessee produced event, warrants that it is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the Lessee is not self-insured, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;

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(5) The Lessee-authorized group, in the case of other than Lessee produced events, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;

(6) The Lessee, in the case of a Lessee produced event, agrees to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the special event activity;

(7) The Lessee, in other than Lessee produced events, shall require the permittee to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the activities authorized by the permit;

(8) The Lessee assumes responsibility for all clean up and repair of any damage resulting from the use or event.

f. Encumbrances. It is expressly understood that the Lessee shall not legally encumber the Premises.

7. **PERSONAL PROPERTY.** WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, used or maintained in or about the Premises, except for such claims or losses that are caused by WSDOT, its employees, or any of its authorized agents, contractors, or contractor's subcontractors.

8. **ENVIRONMENTAL AUDITS.** Lessee will reasonably cooperate in any environmental audits conducted by WSDOT's staff or independent third parties. WSDOT shall ensure that no environmental audit is undertaken with respect to the Premises without prior written notice to the Lessee, and shall require that in the conduct of each such audit, the Lessee's use and occupancy of the Premises not be unreasonably disturbed. Lessee will reimburse WSDOT for the cost of any audit through which Lessee-caused contamination is found. Lessee will provide WSDOT with notice of any inspections with respect to the Premises that are known to Lessee, notices of violations, and orders to clean up contamination. Lessee will permit WSDOT to participate in all settlement or abatement discussions regarding environmental contamination remediation measures that may be required of the Lessee under law or this Lease. In the event the Lessee fails to commence environmental contamination remediation measures as duly directed by a state, federal, or local regulatory agency within 90 days of the date of any notice to take such measures, the WSDOT may elect to perform such work, and Lessee covenants and agrees to reimburse WSDOT for all costs associated with WSDOT's work if such remediation work was a Lessee obligation under law or this Lease.

9. **WSDOT HAZARDOUS SUBSTANCE INDEMNIFICATION.** WSDOT hereby agrees to indemnify, defend and hold Lessee harmless for any costs

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or liabilities associated with the removal or remediation of any hazardous substances that are (1) located upon the Premises prior to the Lessee's occupancy of the Premises or the execution of this Lease, whichever is the earlier; and (2) which come to be located on the Premises by any act of the WSDOT, or any of its agents, employees, contractors or contractor's subcontractors.

#### 10. MAINTENANCE RESPONSIBILITIES.

a. The Lessee's maintenance responsibilities with respect to the Premises shall be as follows:

(1) At a minimum, maintaining such areas at a level equal to or better than the medium level of care as identified in Exhibit C attached hereto and incorporated herein by this reference;

(2) Because of the special free draining nature of the soils on the I-90 lid structure, being responsible for ensuring that the landscaping gets sufficient water to keep the landscaping alive; and if the necessary irrigation is not provided, being responsible for the replacement of landscaping that dies or is severely damaged due to lack of water;

(3) Maintaining the drainage systems within the Premises; and

(4) Removing any and all graffiti.

b. The WSDOT shall maintain and repair the structural components of retaining walls and the I-90 lid structure.

11. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT UTILITY FRANCHISES AND PERMITS. The WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain existing facilities and, for itself, to grant utility franchises and/or permits across the Premises; Provided, that WSDOT shall require every utility franchise and permit holder issued a permit or franchise after the execution date of this Lease, to provide to the Lessee's Superintendent of Parks & Recreation, except in an emergency, not less than forty-eight (48) hours prior written notice of any intent by such utility franchise or permit holder to enter upon or perform any work on the Premises, and in the event of an emergency, to provide prior notice to such official by telephone at 206-684-8022 (or such other telephone number as may be designated by Lessee by written notice to WSDOT) regarding such intended entry or work. WSDOT shall require the franchise or permit holder to accomplish such maintenance or installation in such a manner as to minimize any disruption to the Lessee. The WSDOT shall require all franchise/permit holders to restore paving, grading, landscaping and other improvements damaged by the entry, improvement or maintenance work by or for the utility

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franchise or permit holder to at least as good a condition as such paving, grading, landscaping and improvements were in immediately prior to the commencement of such franchisee's or permittee's improvement work.

The Lessee will not disturb markers installed by a franchise/permit holder. Prior to tilling of the soil or the undertaking of any other operation of the Lessee in which earth, rock, or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater, the Lessee must provide notice to all owners of underground facilities by calling 1-800-424-5555 (or such other telephone number as may be designated). Furthermore, the Lessee must comply with all provisions of Ch. 19.122 RCW relating to underground facilities. Violation of this statute is subject to a possible civil penalty.

## **12. PROTECTION OF WSDOT STRUCTURES.**

a. The Lessee shall inform its employees, agents, contractors, and permittees who, as such, have any City authorization to affect, or official function or responsibility with respect to, any portion of the special "soil system" on the top of the I-90 Project Lid, regarding such system (which consists of a waterproof membrane, drainage systems, filter fabric, drain gravel, irrigation system and topsoil), and prohibit the damaging of such system by any such person or entity;

b. The Lessee shall prohibit any excavation, drilling, or driving of any stake or other material into the special "soil system" by any of its employees, agents, contractors, or permittees other than is necessary for the repair of the irrigation system or replacement planting of existing trees and other plants, unless the prior written approval of the WSDOT has been secured with respect to such work;

c. The Lessee shall prohibit any excavation or other work by any of its employees, agents, contractors, and permittees that would jeopardize the I-90 walls and tie back system, unless the prior written approval of the WSDOT Northwest Region Maintenance Engineer has been secured with respect to such work through the Property Management Supervisor as provided in Section 26;

d. In the event that WSDOT structures and systems referenced in this section are damaged by any activity authorized under this Lease or if the Lessee fails to prohibit damage to the such structures and systems as provided herein, the Lessee is responsible for the reasonable costs and expenses incurred by the WSDOT in repairing such damage; and

e. The Lessee, at its own expense, shall make whatever provisions beyond those required of the WSDOT under Section 15

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hereof the Lessee deems necessary to protect users of the Premises from any foreseeable hazards resulting from use and operation of the highway.

**13. TAXES, ASSESSMENTS AND UTILITIES.** The Lessee shall pay that share of all assessments imposed on or with respect to the Premises that is the Lessee's obligation under RCW 79.44.010, and also pay all taxes which may hereafter be levied or imposed upon the interest of the Lessee or by reason of this Lease. The Lessee is responsible for and agrees to pay for utilities or other services which serve the Premises.

**14. IMPROVEMENTS.**

a. WSDOT shall not be required to make any improvements to or perform any maintenance or repairs upon any part of the Premises.

b. WSDOT's Approval of Lessee's Plans for Design and Construction: The Lessee shall not be permitted to make any additional improvements to the Premises without the prior written approval of the WSDOT. The Lessee covenants that any regrading or improvements to be constructed on the Premises by the Lessee will not at any time during or after construction either damage, threaten to damage or otherwise adversely affect any part or element of the highway facility under or immediately adjacent to the Premises or the operation thereof as then developed and used. The WSDOT shall be furnished with two sets of complete plans, details and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises by the Lessee, and no such work shall be done by the Lessee on the Premises without prior written approval of such plans by the WSDOT, which approval shall not be unreasonably withheld or delayed. All construction work by the Lessee shall be done in conformity with the plans and specifications as approved by the WSDOT. The WSDOT may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure compliance with the WSDOT-approved plans and specifications, protection of all parts and elements of the highway facility and compliance with WSDOT's construction and safety standards. The improvements shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and construction when necessary.

c. Liens: Nothing in this Lease shall be deemed to make the Lessee the agent of the WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. The Lessee acknowledges that the WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the Lessee.

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15. **WSDOT'S RIGHT OF ENTRY AND INSPECTION.** The WSDOT, for itself, its agents and contractors and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for inspection purposes, including the inspection of any excavation, construction or maintenance work being done by the Lessee. Further, the WSDOT, for itself, its agents and contractors, and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for the purpose of maintenance, construction or reconstruction of the highway facility or any element thereof. No such entry, for the purpose of maintenance, construction or reconstruction shall occur without at least seven (7) days' prior written notice to the Lessee. In the event of an emergency only prior notice by telephone to Superintendent of Parks and Recreation at 206-684-8022 (or such other person or telephone number as may be designated by Lessee by written notice to WSDOT) shall be required.

The WSDOT shall in no way be responsible for any incidental or consequential damages due to loss of use by Lessee caused by any such entry.

In the event of any such entry, inspection, maintenance, construction or reconstruction of the highway facility or any element thereof by the WSDOT, or any of its agents, employees, contractors, or contractor's subcontractors, WSDOT shall ensure that such entry and work is performed in such a manner as to protect public safety and minimize any disruption to the Lessee. Following the completion of such inspection, maintenance, construction or reconstruction, any paving, grading, landscaping and other improvements on the Premises damaged by such entry, inspection, construction or reconstruction work shall be restored or repaired by or for the WSDOT to at least as good a condition as such paving, grading, landscaping and other improvements were in immediately prior to the commencement of such activity.

The parties expressly agree that nothing herein precludes any WSDOT employee, agent or contractor from using the Premises as a member of the general public.

16. **INSURANCE.** Lessee warrants that it is self-insured, and agrees to provide acceptable evidence in the form of a certification of its self-insured status to WSDOT or, if the Lessee is not self-insured, to secure liability insurance in the form and amount reasonably determined necessary by WSDOT; Provided, that WSDOT may reasonably adjust said coverage requirements from time to time based on risk factors and the adequacy of the stated policy limits.

17. **HOLD HARMLESS/INDEMNIFICATION.**

a. **Lessee's Indemnification:** Lessee, its successors or assigns, will protect, save, and hold harmless and defend the

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WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors on the Premises under this Lease.

b. WSDOT's Indemnification: The WSDOT shall protect, save, and hold harmless and defend the Lessee and its officers, employees, and authorized agents from all claims, actions, costs, damages, or expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of WSDOT related to activities reserved to WSDOT, or any of its officers, agents, employees, contractors or the contractor's subcontractors on the Premises under this Lease.

c. Concurrent Negligence or Actions Covered by RCW 4.24.115: If the claims or damages are caused by or result from the concurrent negligence of (i) the WSDOT, or any of its officers, employees, agents, contractors, or the contractor's subcontractors, and (ii) the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors, or involves any action covered by RCW 4.24.115, a party's indemnification obligation hereunder shall be valid and enforceable only to the extent of the negligence of such party or any of its officers, agents, employees, licensees, invitees, contractors, or the contractor's subcontractors, as appropriate.

18. **NONDISCRIMINATION.** The Lessee, for itself and its successors, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be unlawfully excluded from participation in, be unlawfully denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the Premises, that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no such unlawful discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, that such unlawful discrimination shall not be practiced against the public in their access to and use of the facility and services provided for public accommodation constructed or operated on, over, or under the right of way, and that the Lessee shall use the Premises in compliance with all other requirements imposed pursuant to Ch.49.60 RCW and 49 C.F.R. Part 21. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the WSDOT to terminate this Lease in accordance with the procedures set forth herein.

19. **DEFAULT.** Upon the material breach of this Lease by

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either party hereto, the other party may give to the party allegedly in breach notice specifying the nature of such breach, the period of time within which such breach must be cured, and at the option of the party giving such notice, such party's intention to declare a default and to terminate this Lease in the event such breach is not cured within the specified cure period. Neither party shall be in default unless it fails to perform an obligation required of it within the cure period, which time shall not extend more than thirty (30) days after the date of the notice of breach, except that if the nature of the obligation is such that more than thirty (30) days is required for performance or cure, then the party alleged in breach shall not be in default if such party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The non-defaulting party may in writing, at its option, extend the cure period if in the judgment of the non-breaching party, an extension is justified. After expiration of the cure period, and any extension thereof, if one or more defaults remains unremedied, this Lease shall terminate without further notice; and Provided, that if the breach is by the Lessee, WSDOT shall have the option of giving notice in writing of its intention to cure a non-emergent default or verbal notice if the default is deemed an emergency by the WSDOT, by itself or through use of agents or contractors. The Lessee agrees to reimburse WSDOT within thirty (30) days of the date of WSDOT's invoice for resultant direct costs WSDOT incurs in curing such default or, in the alternative, the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto in an amount equal to the cost incurred in curing the default.

**20. ASSIGNMENTS.** Neither this Lease nor any rights created by it may be assigned; Provided, that nothing herein shall prohibit the Lessee from contracting with one or more third parties for the performance of the maintenance work described herein, subject to the prior written approval of the WSDOT, which shall not be unreasonably withheld. Any such contract shall not relieve the Lessee of its obligation to maintain the Premises as agreed herein.

**21. BINDING CONTRACT.** This Lease shall not become binding upon the State of Washington unless and until accepted and approved for the Washington State Department of Transportation by the Secretary or his duly authorized representative.

**22. MODIFICATIONS.** This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

**23. INTERPRETATION.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington.

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The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

**24. INTERRUPTION, TERMINATION, AND PARTIAL TERMINATION.**

a. **Interruption:** In the case of a transportation need not expected to last until the end of the 20-year term, WSDOT shall have only the right to interrupt this Lease for the period of need, at the end of which WSDOT shall promptly restore the Premises to a physical condition that is equal to or better than the condition it was in immediately prior to such interruption, and promptly thereafter shall restore use of the Premises to the Lessee. During any such period of interruption, Lessee shall have no responsibility or obligation hereunder to perform any maintenance work with respect to the area of the Premises that is affected by such interruption.

b. **Termination by WSDOT:** WSDOT may terminate this Lease in whole or in part:

(1) Immediately if the Premises is needed for an emergency transportation purpose;

(2) On 180 days' written notice, if the Premises is needed for a transportation need. If the transportation need, in WSDOT's determination, does not require terminating use and occupancy rights with respect to all of the Premises, the Lessee shall continue to lease the unaffected remainder of the Premises under the terms and conditions of this Lease; Provided, that if the parties agree that specific use areas within the Premises are no longer functional as a result of partial termination by WSDOT, WSDOT shall redevelop such affected areas to a mutually acceptable condition and Lessee shall continue to maintain the Premises as provided herein. For example, if the partial termination leaves half of a baseball field remaining within the Premises, the remaining area will be redeveloped by the WSDOT to a mutually acceptable condition at WSDOT's expense, and Lessee shall thereafter resume maintenance of such affected area as required by this Lease.

(3) In the event it becomes apparent, in WSDOT's sole judgment, that the Premises have ceased to be used or have been abandoned for a continuous period of sixty (60) days, the WSDOT, at its option, shall have the right to terminate this Lease, provided due notice of such apparent default and the WSDOT's intent to terminate this Lease shall be given to the Lessee not less than thirty (30) days prior to the proposed termination date together with a demand to cure such default within such thirty (30) day cure period.

(4) For default as provided herein.

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c. Termination by Lessee for Convenience: The Lessee may terminate this Lease as to all or any portion of the Premises upon 180 days' prior written notice to the WSDOT.

d. Termination by Lessee for Default by WSDOT: The Lease of all or any portion of the Premises may be terminated by the Lessee as to all or such portion of the Premises if the WSDOT has breached this Lease and, after the WSDOT's receipt of notice of such breach, such breach has not been cured within the time period specified in Section 19 hereof. For purposes of termination under this provision, the Lessee may declare any of the following a breach by the WSDOT, unless otherwise agreed to by the parties:

(1) The interruption of the Lessee's use and occupancy of the Premises or a portion thereof for a period of more than one year;

(2) The failure to redevelop within one (1) year after partial termination any remaining portion of the Premises that has become no longer functional as a result of said partial termination of this Lease by the WSDOT;

(3) The adoption of any policy or regulation by WSDOT that makes the maintenance of the Premises or any portion thereof unreasonably difficult or expensive or the use and occupancy of the Premises or any portion thereof economically or operationally unreasonable or unacceptable to the Lessee or that unreasonably limits or restricts use or occupancy of the Premises for Active Recreation; and

(4) The failure of the WSDOT to indemnify the Lessee as provided elsewhere herein.

25. SUBSEQUENT USE FOR TRANSPORTATION PURPOSES. The Lessee and the WSDOT hereby affirm that upon expiration or termination of this Lease for any reason and the subsequent use of the Premises for highway purposes, regardless of the actual use, such highway use will not be considered the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 U.S.C. 138 and 49 U.S.C. 1653(f).

26. NOTICES. Except as provided elsewhere herein, wherever a written notice is to be given or made, it shall be personally served or sent through the United States Postal Service by certified mail, postage prepaid, addressed to the party at the address listed for it below, or personally served on the party at the address listed below, unless such party has designated, by prior written notice, a different address:

WSDOT: Property Management Supervisor  
DEPARTMENT OF TRANSPORTATION  
Mail Stop 7338

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P. O. Box 4 7338  
Olympia, WA 98504-7338

**COPY TO:** Northwest Region Maintenance Engineer  
DEPARTMENT OF TRANSPORTATION  
P.O. Box 330310  
15700 Dayton Avenue North  
Seattle, WA 98133-9710

**LESSEE:** Superintendent  
Department of Parks & Recreation  
THE CITY OF SEATTLE  
Administration Building  
100 Dexter Avenue North  
Seattle, WA 98109

Said notices shall be effective upon receipt of notices in the manner described above.

**27. CUMULATIVE REMEDIES.** All remedies available at law or in equity to either party for breach of this Lease are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**28. AUTHORITY OF PARTIES' REPRESENTATIVES.**

a. **Superintendent's Authority:** The term "Superintendent" as used throughout this Lease shall mean the Superintendent of the Lessee's Parks & Recreation Department or his/her successor or designee. In regard to any consent and approval rights of the Lessee as provided herein, the Superintendent or his/her successor or designee shall have such approval right. The action of the Superintendent pursuant to or in implementation of this Lease does not constitute any official action by any other City of Seattle department or official that may be required by law, ordinance, rule or regulation.

b. **Northwest Region Maintenance Engineer and Property Management Supervisor Authority:** All references in this Lease to Northwest Region Maintenance Engineer or Property Management Supervisor shall include that official's functional successor(s).

**29. SURRENDER UPON TERMINATION.**

a. **Surrender of Premises:** Except as otherwise provided herein, upon termination or expiration of this Lease, the Lessee shall cease its operations on and/or use of the affected Premises and surrender all affected portions of the Premises to the WSDOT. In the event the Lessee fails to vacate and surrender the Premises on the date provided herein, it shall be liable for any and all

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costs to the WSDOT arising from such failure.

b. Condition of Premises Upon Surrender:

(1) Prior to termination for convenience by the Lessee, as provided elsewhere herein, or for a Lessee default where the Lessee has not diligently attempted to cure the default, or expiration of this Lease, the Lessee shall remove from the Premises, at no cost or expense to the WSDOT, all improvements, trade fixtures, equipment, furnishings, and other personal property owned and/or placed in or on the Premises by the Lessee and restore the same to passive recreation use consistent with the landscaping of the I-90 Lid, to WSDOT's reasonable satisfaction, unless both parties agree in writing that all or part of said improvements, trade fixtures, equipment, furnishings, or other personal property shall remain on the Premises. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to the WSDOT.

(2) In the event the Lease is terminated by WSDOT because of a Lessee default and the Lessee has diligently attempted to cure the default within the cure period but was unable to do so, the Lessee shall be granted a 120 day permit to enter upon the affected Premises and to, at its expense, remove all improvements, trade fixtures, equipment, furnishings, or other personal property and restore the same to passive recreation use consistent with the landscaping of the I-90 Lid, to WSDOT's reasonable satisfaction, unless both parties agree in writing that all or a part of said improvements, trade fixtures, equipment, furnishings or other personal property shall remain on the Premises. The time period for said permit may be extended if in WSDOT's sole judgment, an extension is warranted. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to WSDOT. Further, Lessee hereby agrees to retain all liability and to protect, save, and hold harmless and defend WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, the contractor's subcontractors, or any person whomsoever on the Premises for which the improvement, trade fixture, equipment, furnishing, or other personal property is located until said removal and restoration is complete. The liability and indemnification obligations contained in this section shall survive the expiration or termination of this Lease.

(3) In the event the Lease is terminated by WSDOT for a transportation need or for convenience, or by the Lessee for a

FINAL (2/13/97)

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WSDOT default as provided elsewhere herein, the Lessee is not obligated to remove improvements, trade fixtures, equipment, furnishings and other personal property from the Premises, but has the right to remove Lessee's items it desires prior to the effective termination date. During the first twenty years of this Lease, WSDOT at its expense will replace, relocate, or compensate the Lessee for improvements the Lessee made at Lessee expense in the event the Lease is terminated by WSDOT for a transportation need or for convenience. The amount of compensation will be determined as depreciated value based on the useful life of the improvement.

c. **Disposition of Unremoved Improvements and Property:** In the event that the Lessee has not removed its improvements, trade fixtures, equipment, furnishings, and other personal property upon termination or expiration of this Lease or as otherwise required herein, the improvements and property shall become the property of the WSDOT and WSDOT may dispose of the property and improvements at Lessee's expense in a manner prescribed by the WSDOT and the Lessee shall reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such removal and disposal within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in removing and disposing of the improvements and property; Provided, further that this provision does not apply where termination is as provided in paragraph 29.b(3) herein.

d. **Failure to Restore the Premises:** In the event the Lessee fails to restore the portion of the Premises to be surrendered to passive recreation use consistent with the landscaping of the I-90 Lid to the reasonable satisfaction of WSDOT upon termination or expiration of this Lease, or as otherwise provided herein, the WSDOT may restore said Premises at Lessee's expense and the Lessee will reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such restoration within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in restoring the property; Provided, further that this provision does not apply where termination is as provided in paragraph 29.b(3) herein.

**30. NO WAIVER.** No action other than a notice by one party to the other specifically stating that such notice has the effect of a waiver, shall constitute a waiver of any particular breach or default of such other party. No such notice shall waive a party's failure to fully comply with any other term, condition, or

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provision of this Lease, irrespective of any knowledge any officer, employee, or agent of the other party may have of any breach or default of, or noncompliance with, such other term, condition, or provision. No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Lease. The performance or acceptance of maintenance services for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

**31. SUPERSESION OF PRIOR AGREEMENTS.** This Lease represents the entire agreement of the parties with regard to the subject matter hereof and supersedes any prior agreement not incorporated herein. In the event of any inconsistency between this Lease and any prior agreement, whether written or oral, the terms of this Lease shall prevail.

**32. NEGOTIATED AGREEMENT.** The parties to this Lease acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Lease are not to be construed against any party on the basis of such party's draftsmanship thereof.

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IN WITNESS WHEREOF, the parties hereto have had their  
respective representatives sign their names in the spaces below:

THE CITY OF SEATTLE  
Lessee

By: \_\_\_\_\_

Date: \_\_\_\_\_

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION  
WSDOT

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: Bryce Brown  
Assistant Attorney General

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IT IS DUE TO THE QUALITY OF THE DOCUMENT.

FINAL (2/13/97)

STATE OF WASHINGTON )  
 ) ss. (CITY ACKNOWLEDGMENT)  
THE COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of The City of Seattle, who on oath stated that \_\_\_\_\_ executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes herein mentioned, and that \_\_\_\_\_ was authorized to execute the said instrument for and on behalf of The City of Seattle.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above Written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or type name of notary)

Notary Public in and for the State Washington, residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

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STATE OF WASHINGTON        )  
                              ) ss.       (WSDOT ACKNOWLEDGMENT)  
COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, to me known to be the duly appointed Director, Real Estate Services, Washington State Department of Transportation, who stated, on oath, that \_\_\_\_\_ executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein set forth, and that \_\_\_\_\_ was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above Written.

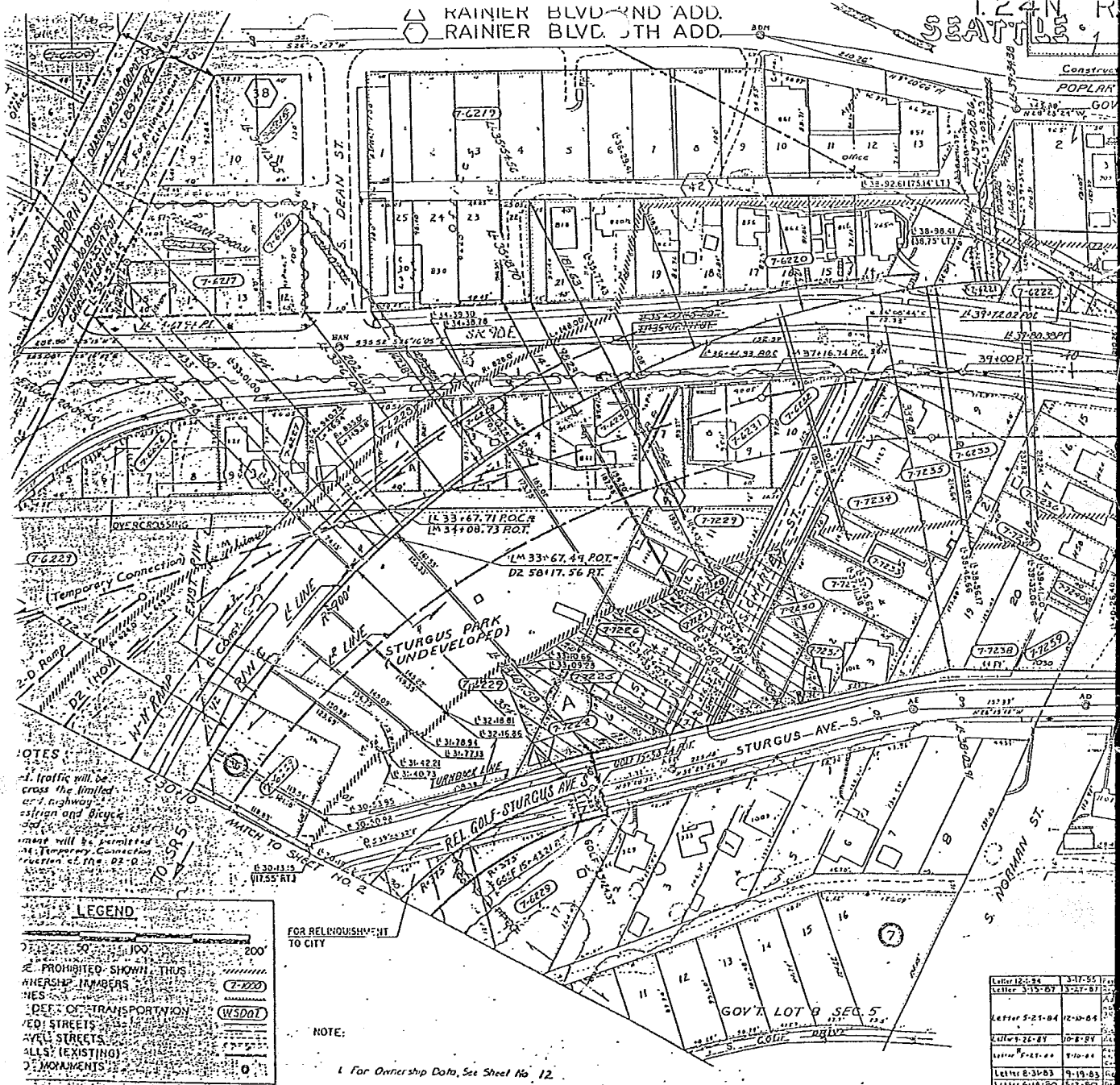
\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or type name of notary)

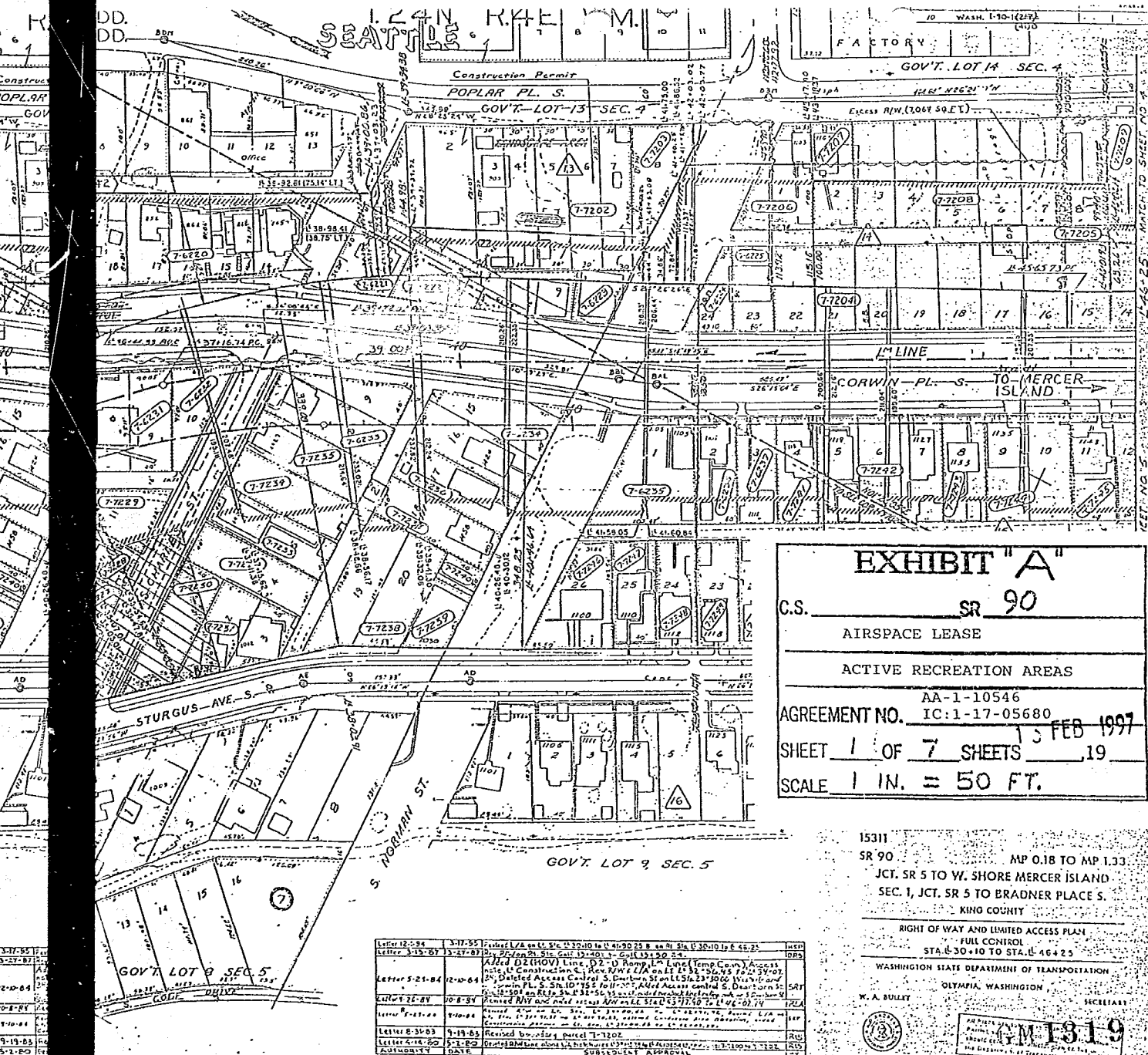
Notary Public in and for the State Washington, residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

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Letter 12-1-84	3-17-85	Page 1
Letter 3-15-87	3-27-87	Page 2
Letter 5-21-84	12-2-85	Page 3
Letter 9-26-84	10-8-84	Page 4
Letter 8-21-88	8-10-88	Page 5
Letter 8-31-83	9-19-83	Page 6
Letter 4-14-80	5-2-80	Page 7
AUTHORITY	DATE	



**EXHIBIT "A"**

C.S. \_\_\_\_\_ SR 90

AIRSPACE LEASE

ACTIVE RECREATION AREAS

AA-1-10546

AGREEMENT NO. IC:1-17-05680

SHEET 1 OF 7 SHEETS

SCALE 1 IN. = 50 FT.

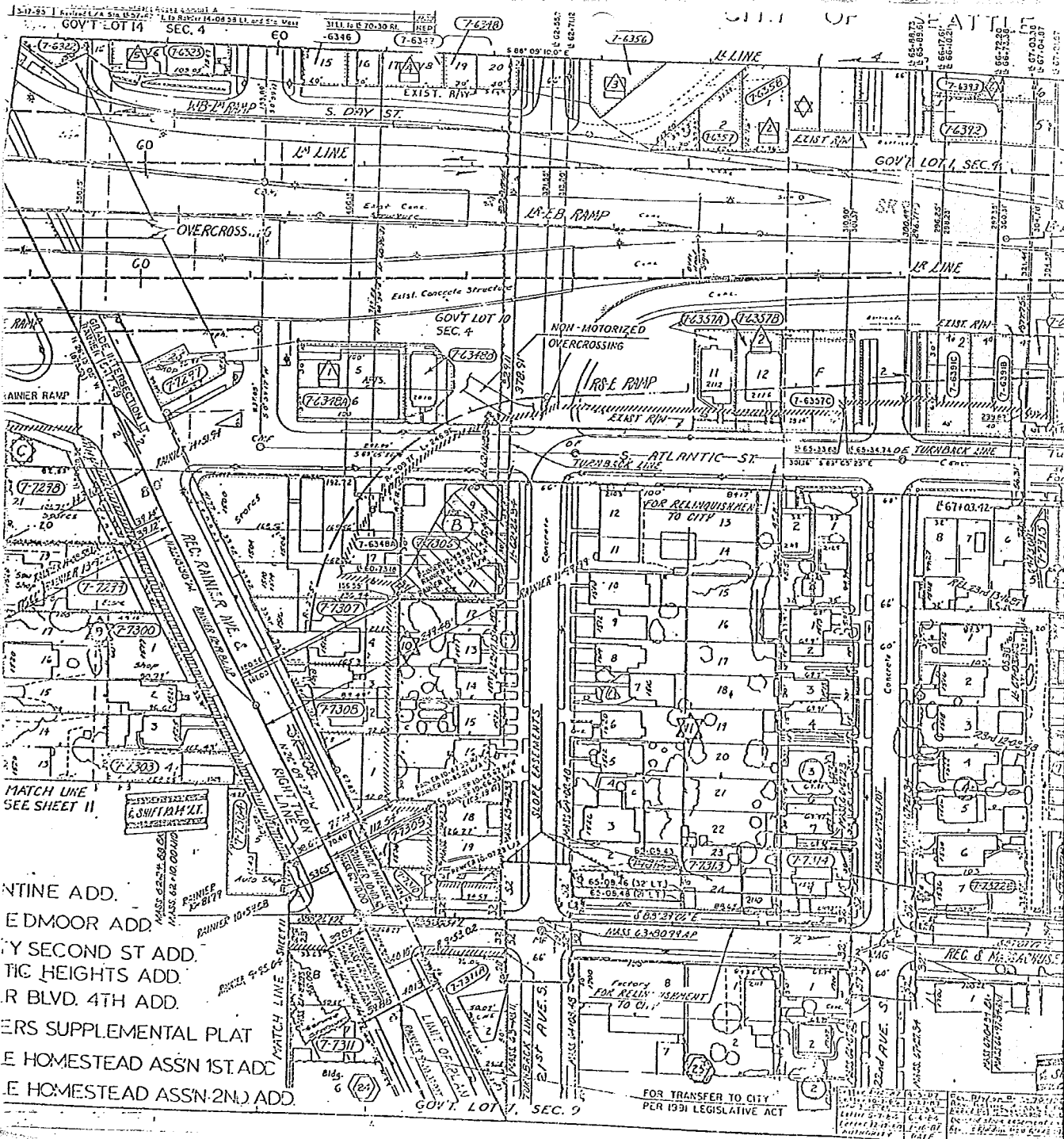
15311  
SR 90  
MP 0.18 TO MP 1.33  
JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 1, JCT. SR 5 TO BRADNER PLACE S.  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
STA. 0+30+10 TO STA. 0+46+25  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
OLYMPIA, WASHINGTON  
W. A. BULLY  
DESIGN ENGINEER  
DATE FEB. 29, 1980

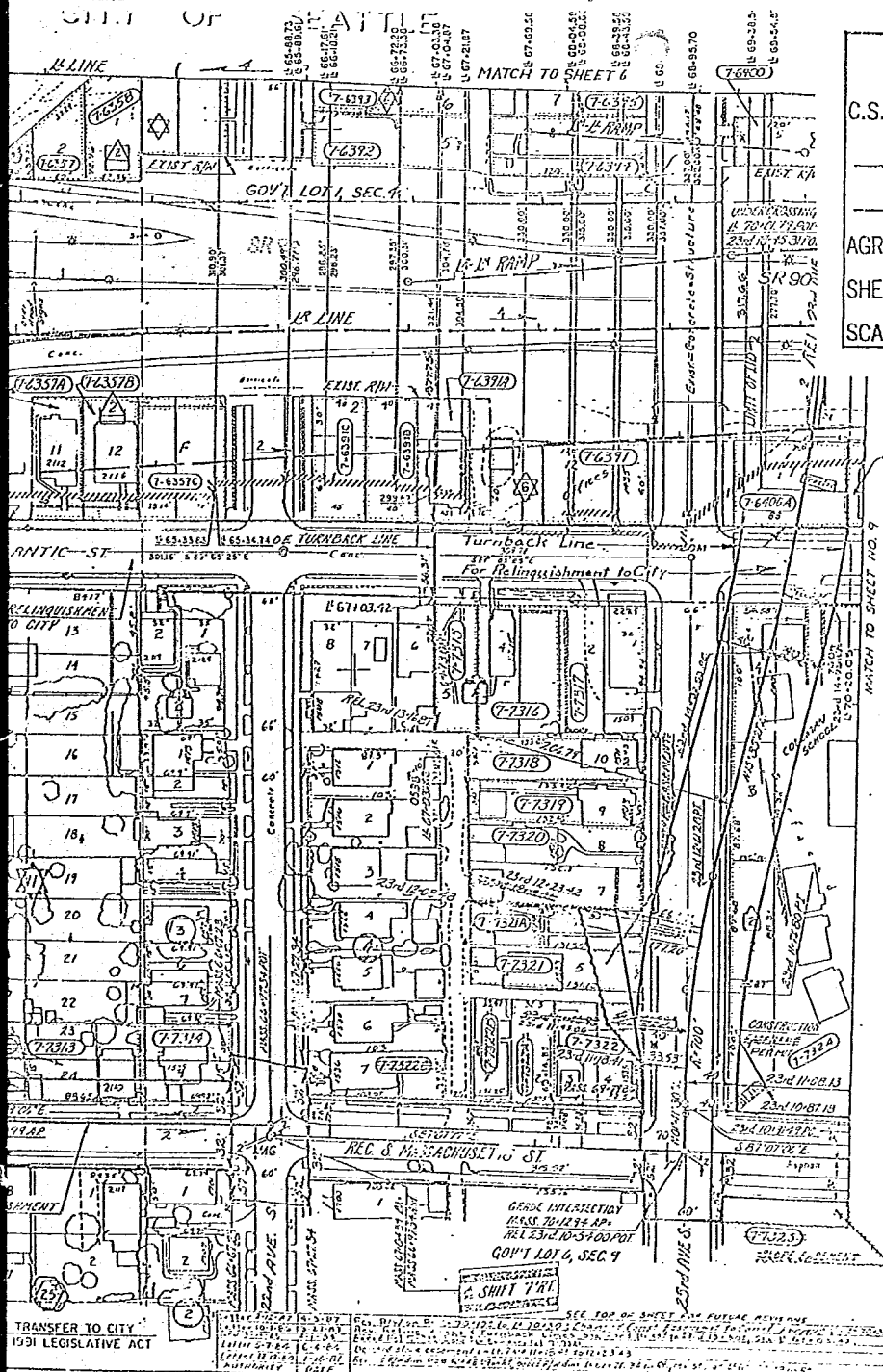
Letter 12-54	3-17-55	Added L/A on L. 51-12-10 to L. 41-90-25 B on R. 51-12-10 to L. 46-25	men
Letter 3-15-57	3-27-57	Added L/A on L. 51-12-10 to L. 41-90-25 B on R. 51-12-10 to L. 46-25	men
Letter 5-21-54	12-10-54	Added L/A on L. 51-12-10 to L. 41-90-25 B on R. 51-12-10 to L. 46-25	men
Letter 5-21-54	12-10-54	Added L/A on L. 51-12-10 to L. 41-90-25 B on R. 51-12-10 to L. 46-25	men
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Letter 5-21-54	12-10-54	Added L/A on L. 51-12-10 to L. 41-90-25 B on R. 51-12-10 to L. 46-25	men

Designated for Limited Access Control By Comm. Res. No. 95, July 23, 1952

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# EXHIBIT "A"

C.S. SR 90  
 AIRSPACE LEASE  
 ACTIVE RECREATION AREAS  
 AGREEMENT NO. AA-1-10546  
IC-1-17-05680  
 SHEET 2 OF 7 SHEETS 13 19  
 SCALE 1 IN. = 50 FT.

OBERTO RAINIER 9' 48' LT. TYPE

\* This approach shall not exceed 30 feet in width and shall be limited to right turn ingress and egress only.  
 NOTE: 1. For Ownership Data, See Sheet No. 13.  
 2. For Total parcel details, See sheet 1.

REVISION DATED JUNE 25, 1992 TENTATIVELY  
 APPROVED BY THE STATE DESIGN ENGINEER

EXHIBIT A  
 REVISION DATED JUNE 25, 1992 ADOPTED  
 BY ASSISTANT SECRETARY FOR PROGRAM  
 DEVELOPMENT FINDINGS AND ORDER  
 DATED JUNE 14, 1993

## LEGEND

- SS TO BE PROHIBITED SHOWN, THUS
- PROPERTY OWNERSHIP NUMBERS
- PROPERTY LINES
- WASHINGTON STATE DEPT. OF TRANSPORTATION
- EXISTING PAVED STREETS
- EXISTING GRAVEL STREETS
- RETAINING WALLS (EXISTING)
- CO-ORDINATED MONUMENTS

This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 1, 1971, as revised by the Board of Review Findings and Order, issued March 26, 1973, and to provisions of the Memorandum Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Department of Transportation.

15311  
 SR 90  
 JCT. SR 5 TO W. SHORE MERCER ISLAND  
 S.C. 1, JCT. SR 5 TO BRADNER PLACES  
 KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
 FULL CONTROL  
 STA. 1157+07 TO STA. 1170+30

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

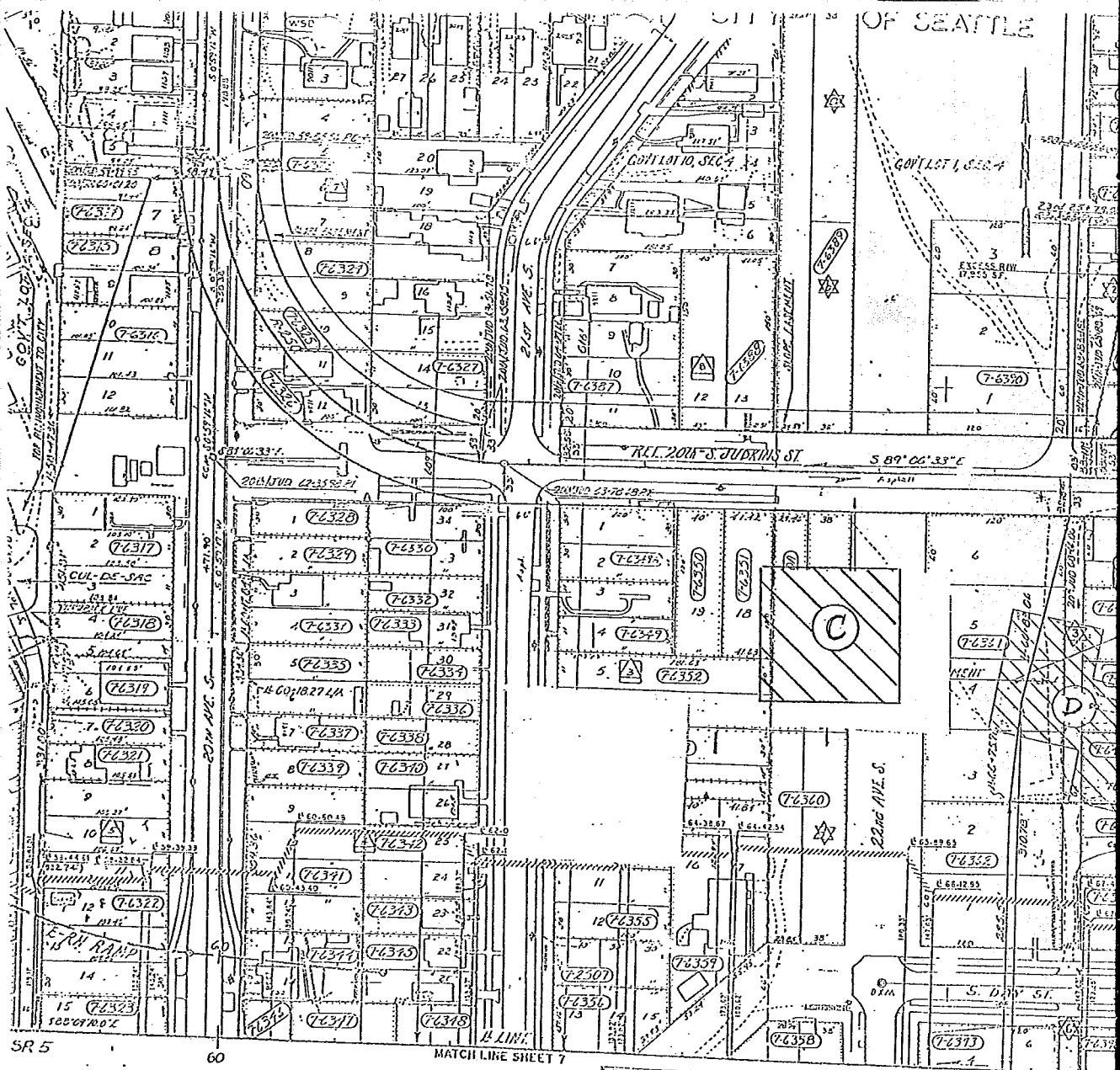
OLYMPIA, WASHINGTON

W. A. BULLEY



DESIGN ENGINEER

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IER BLVD. ADD.  
 NTY SECOND ST. ADD.  
 TLE HOMESTEAD ASS'N 1ST ADD.

DATE	DESCRIPTION	BY
1-12-94	Plat of 1/4 Sec. 1, T. 36 N., R. 10 E., S. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	PLA

EXHIBIT "A"

C.S. \_\_\_\_\_ SR 90

## AIRSPACE LEASE

## ACTIVE RECREATION AREAS

AA-1-10546

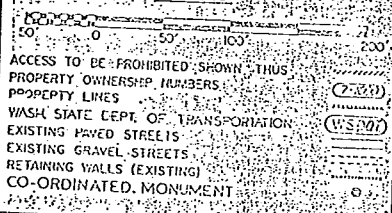
AGREEMENT NO. IC:1-17-05680

SHEET 3 OF 7 SHEETS 13 FEB 1944

SCALE 1 IN. = 50 FT.



### LEGEND



This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 3, 1971, as revised by the Board of Review Findings and Order issued March 26, 1973, and to provisions of the Metropolitan Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Department of Transportation.

15311  
SR 90  
JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 1, JCT. SR 5 TO BRADNER PLACE S.  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLANS  
FULL CONTROL  
STA. 57+67 TO STA. 70+52

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
OLYMPIA, WASHINGTON

W. A. BULLIS

1910

1314

[illegible]

J. D. Anderson

*P. A. Chaudhary*

[illegible]

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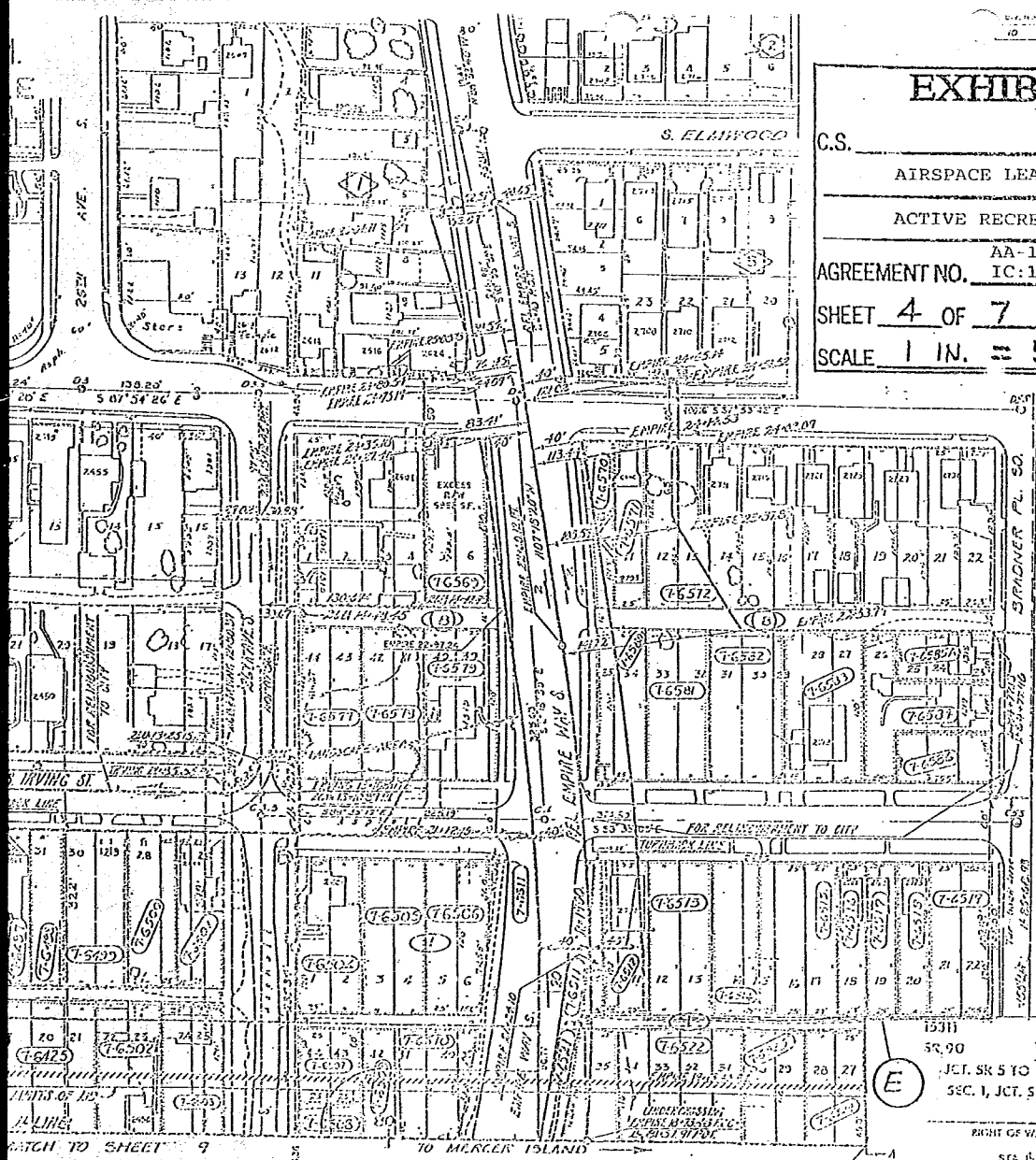
CABLE LINE ADD.

GOV'T LOT A SEC

- BEMIS ADD.
- BRADNER'S ADD.
- WHEELER'S 3RD ADD.

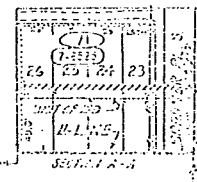
SEATTLE HOMESTEAD ASSN. 1ST ADD.

[illegible]



<b>EXHIBIT "A"</b>	
C.S.	SR 90
AIRSPACE LEASE	
ACTIVE RECREATION AREAS	
AA-1-10546	
AGREEMENT NO. IC:1-17-05680	
SHEET 4 OF 7 SHEETS 3 FEB 1997	
SCALE 1 IN. = 50 FT.	

For R/R & L/A ahead see SR 90, Jct. SR 5 to West Shore Mercer Island, Sec. 2, Bradner Place S. to West Shore Mercer Island dated July 2, 1979.



**END OF PLAN**  
Sta. 1+65+00.93  
MP 1.33

MP 0.18 TO MP 1.33  
JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 1, JCT. SR 5 TO BRADNER PLACE S.  
KING COUNTY  
RIGHT OF WAY AND LIMITED ACCESS PLAN  
TIAL CONTROL  
STA. 1+70+48.2 TO STA. 1+85+103.83  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
OLYMPIA, WASHINGTON

W. A. FURRY

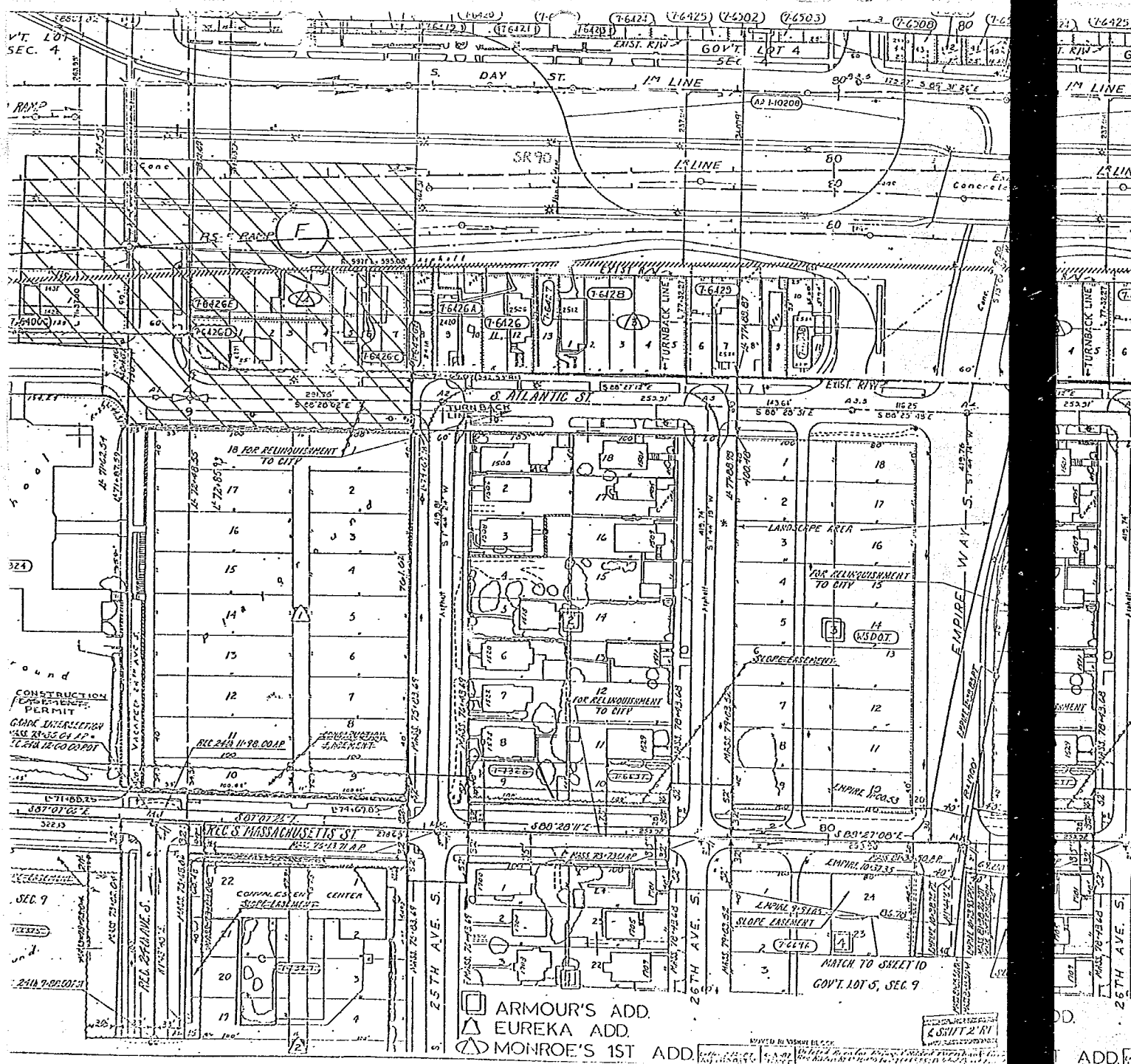


R. D. Boudreau  
EX-101100-372

**GM1319**

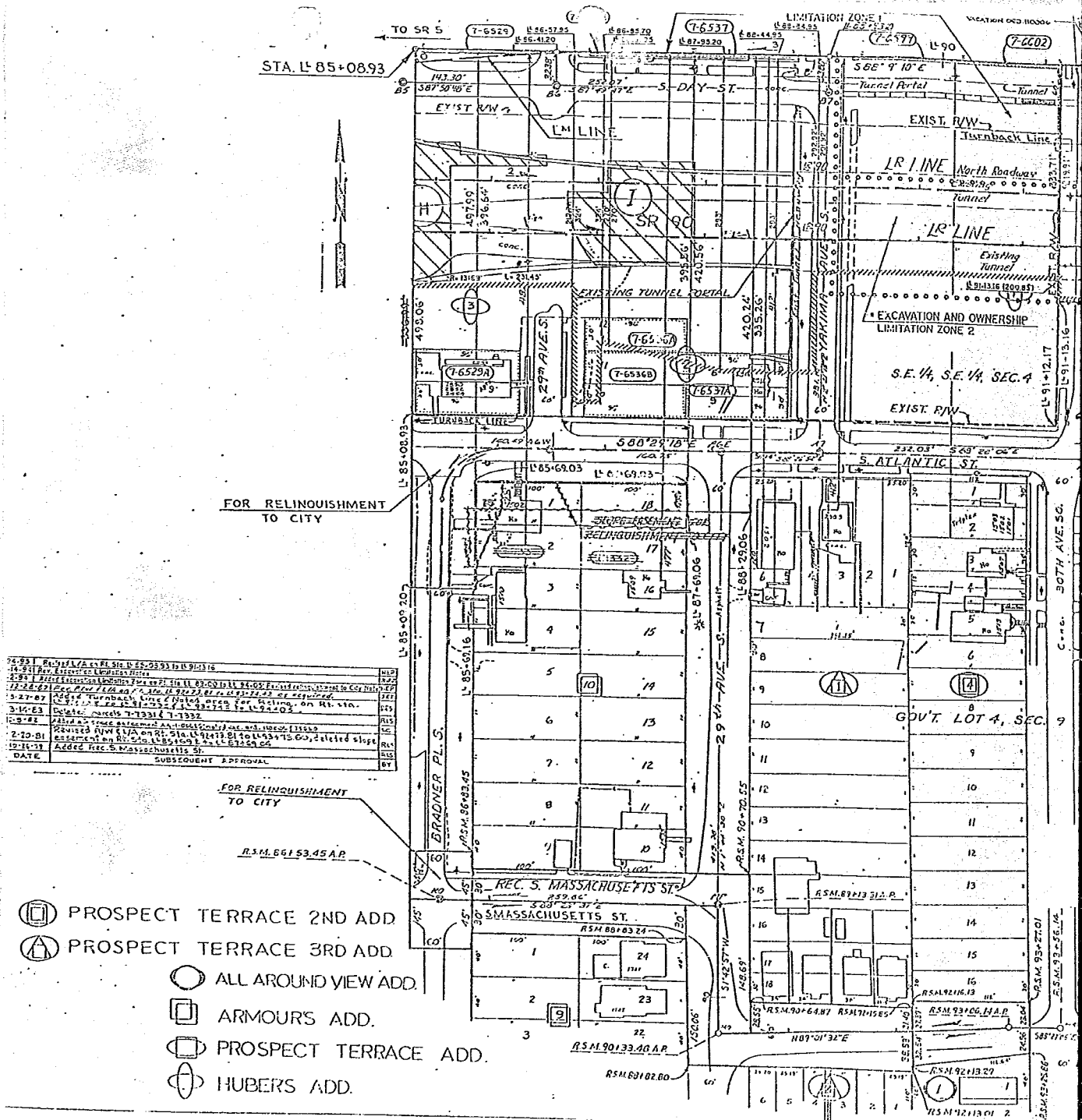
This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 3, 1971, as revised by the Board of Review Findings and Order issued March 26, 1973, and to provisions of the Intermodal Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Department of Transportation.

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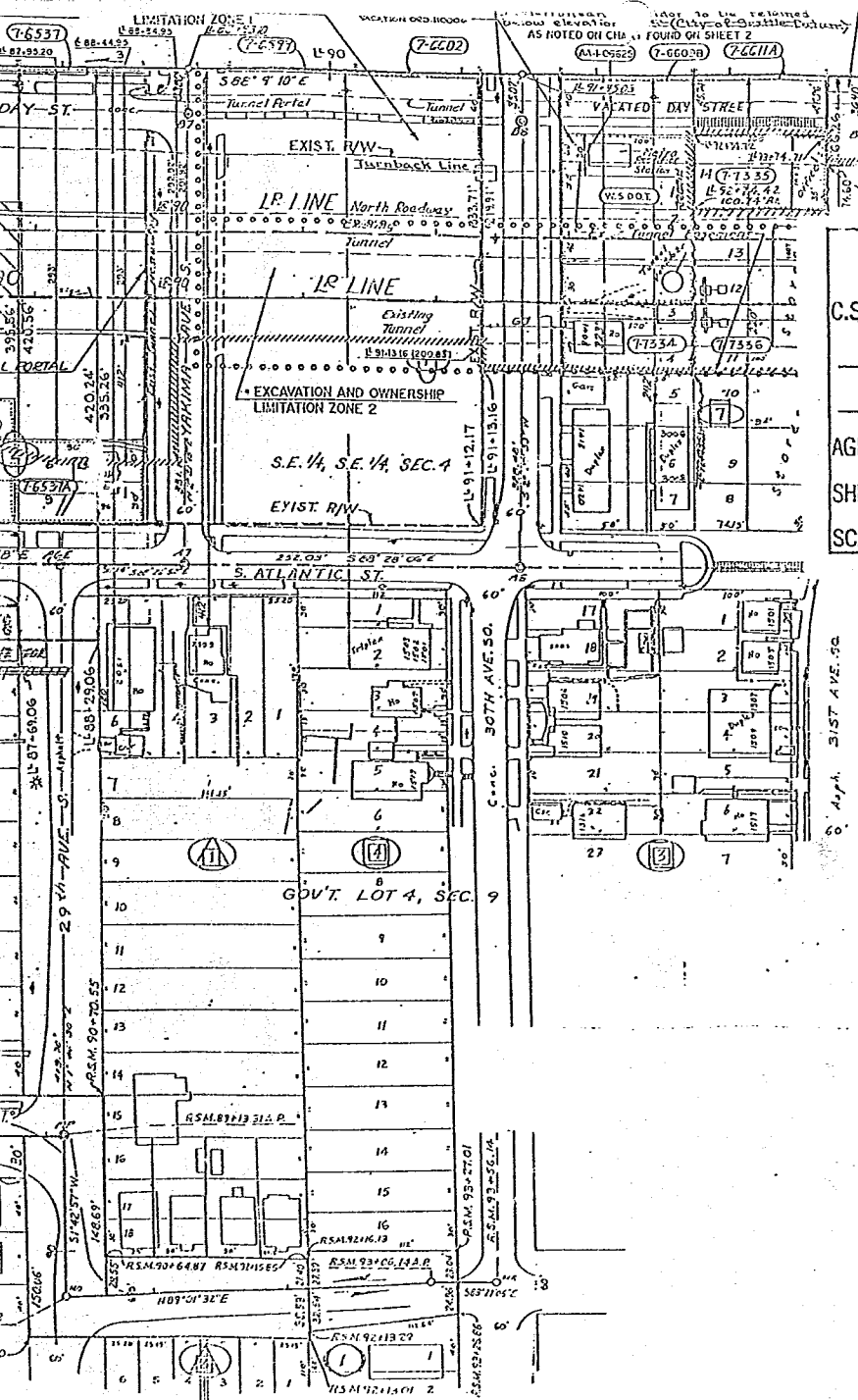












FED. ROAD DIST. NO.	STATE	FED. AID DIV. NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
10	WASH.	10-10546	1977	13	19

T.24N.R.4E.W.M.  
CITY OF SEATTLE

<b>EXHIBIT "A"</b>	
C.S. _____	SR 90
AIRSPACE LEASE	
ACTIVE RECREATION AREAS	
AGREEMENT NO. AA-1-10546 IC-1-17-05680	
SHEET 6 OF 7 SHEETS 13 FEB 1977	
SCALE 1 IN. = 50 FT.	

**LEGEND**

50' 0' 50' 100' 150' 200'

Scale in feet

ACCESS TO BE PROHIBITED SHOWN THUS

PROPERTY OWNER'S MAP NUMBER

PROPERTY LINES

STATE OWNED - DEPT. OF TRANSPORTATION

EXISTING PAVED STREETS

EXISTING GRAVEL STREETS

RETAINING WALLS (EXISTING)

CO-ORDINATED MONUMENTS

This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 7, 1971, as revised by the Board of Review Findings and Order issued March 26, 1973, and to provisions of the Memorandum Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Department of Transportation.

311  
SR 90 MP 1.33 TO MP 3.25  
JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 2, BRADNER PLACE S. TO  
W. SHORE MERCER ISLAND  
KING COUNTY  
RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
STA. L 61+00.93 TO STA. L 94+05  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
OLYMPIA, WASHINGTON

W. A. RULY  
DESIGN ENGINEER  
A.B. Anderson  
DATE July 6, 1979

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



This is a detailed engineering plan of a city block in Portland, Oregon. The plan shows a grid of property lots, streets, and proposed tunnel construction. Key features include:

- Streets:** Irving St, Day St, Lake Washington Blvd. S, and 35th Ave. S.
- Tunnel Construction:** The plan shows the 'IR LINE' (North Roadway) and 'SR LINE' (Tunnel Portal) with various excavation and ownership limitation zones (Zones 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100).
- Excavation and Ownership Limitation Zones:** These zones are marked with numbers and letters, indicating areas where excavation and ownership limitations apply.
- Construction Permits:** The plan includes labels for 'CONSTRUCTION PERMIT' and 'EXIST. TUNNEL PORTAL'.
- Property Lots:** The plan shows various property lots, including 'GOVT LOT 4 SEC 3' and 'GOVT LOT 1 SEC 10'.
- Other Features:** The plan also shows existing and proposed tunnel portals, construction permits, and street names like Irving St, Day St, and Lake Washington Blvd. S.

CURVE DATA				
ROADWAY	FL. SLOPE	$\Delta$	$R$	$L$
6' LINE	10% - 65.52	17° 41' 41"	14000'	132.36'

Non-motorized traffic will be permitted to cross the limited access control line on pedestrian and bicycle trails as provided

Traffic movement will be permitted over the highway structures at: 31st Ave So  
32nd Ave. So.

C.S. \_\_\_\_\_ SR 90

## AIRSPACE LEASE

### ACTIVE RECREATION AREAS

AA-1-10546

IC:1-17-05680

AGREEMENT NO. IC:1-17-05680

SHEET 7 OF 7 SHEETS

SCALE 1 IN. = 50 FT.

LEGEND

50' 0' 50' 100' 200'

Scale in Feet

ACCESS TO BE PROHIBITED SHOWN THUS

PROPERTY OWNERSHIP NUMBERS

PROPERTY LINES

STATE OWNED - DEPT. OF TRANSPORTATION

EXISTING PAVED STREETS

EXISTING GRAVEL STREETS

RETAINING WALLS (EXISTING)

CO-ORDINATED MONUMENTS

This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 3, 1971, as revised by the Board of Review Findings and Order issued March 26, 1973, and to provisions of the Memorandum Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Department of Transportation.

15311  
58 90 MP 133 TO MP 325

JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 2, BRADNER PLACE S. TO  
W. SHORE MERCER ISLAND

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
STA. 1494+05 TO STA. 14105+50  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

OLYMPIA, WASHINGTON

W. A. BULLEY



*A. E. Quisenberry*  
DESIGN ENGINEER

DATE: July 6, 1979

PGM 1319

[illegible]

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

PARCEL "A" (Sturgus Artwork)

A tract of land in Government Lot 9, of Section 5, Township 24 North, Range 4 East, W.M. being portions of Block 41 and a park in the plat of Rainier Boulevard 5th Addition to the City of Seattle, according to the plat thereof recorded in Volume 11 of plats, page 34, portion of Block 2, Orchard Hill Addition to the City of Seattle, according to the plat thereof recorded in Volume 9 of plats page 56 and also portion of South Charles Street, and Sturgus Avenue South, all more particularly described as follows:

Beginning at a point on the northeasterly line of Sturgus Avenue South, that is opposite Highway Engineer's Station (hereinafter referred to as HES) LL 36+16.74 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island Sec. 1, Jct. SR 5 to Bradner Place S., thence northwesterly, along said northeasterly line, to a point opposite HES Golf 15+50.24 P.O.T. on the Rel. Golf-Sturgus Ave. S. Line Survey of said highway and 30 feet northeasterly therefrom; thence northwesterly, parallel with said Rel. Golf-Sturgus Ave. S Line Survey, to a point opposite HES LL 32+48.19 on said LL Line Survey, thence northeasterly, to a point opposite HES LL 32+97.25 on said LL Line Survey and 154.44 feet southwesterly therefrom; thence Southeasterly, to a point opposite HES LL 33+09.28 on said LL Line Survey and 155.33 feet southwesterly, therefrom; thence southerly, to a point opposite HES LL 33+10.66 on said LL Line Survey and 161.53 feet southwesterly therefrom; thence southeasterly, to a point opposite HES LL 34+35.22 on said LL Line Survey and 173.75 feet southwesterly therefrom, thence southwesterly, to a point opposite HES LL 34+37.43 on said LL Line Survey and 182.01 feet southwesterly therefrom; thence southeasterly, to a point opposite HES LL 35+05.01 on said LL Line Survey and 187.98 feet southwesterly, therefrom; thence southwesterly to a point opposite HES LL 35+07.01 on said LL Line Survey and 196.20 feet southwesterly therefrom; thence southeasterly to a point opposite HES LL 35+47.81 on said LL Line Survey and 199.57 feet southwesterly therefrom; thence northeasterly to a point opposite HES LL 35+54.63 on said LL Line Survey and 184.43 feet southwesterly therefrom; thence southeasterly, to a point opposite HES LL 36+42.32 on said LL Line Survey and 193.13 feet southwesterly therefrom; thence southwesterly, to the point of beginning.

EXHIBIT B to Active Recreation Areas

Exh. B  
1 of 6

Rev. 2/10/97

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PARCEL "B" (Atlantic Street Park)

That portion of Lots 6,9,10 and 11, Block 10, Valentine Addition to the City of Seattle, according to the plat recorded in Volume 7 of plats, page 71 records of said county described as follows:

Beginning at a point on the westerly right of way line of 21st Ave. S. that is opposite Highway Engineer's Station (hereinafter referred to as HES) LL 62+26.34 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island; Sec. 1, Jct. SR 5 to Bradner Place S. and 378.90 feet southerly therefrom; thence southerly, along said westerly right of way line, to a point opposite HES Rainier 11+99.99 on the Rec. Rainier Ave. S. Line Survey of said project; thence westerly, to a point opposite HES Rainier 12+46.58 on said Rec. Rainier Ave. S. Line Survey and 161.00 feet northeasterly therefrom; thence northwesterly, to a point opposite HES LL 61+20.90 on said LL Line Survey and 475.56 feet southerly therefrom; thence northeasterly along a 56 foot radius curve to the left, being concave to the northwest, having a chord bearing N 43°49'39" E, an arc distance of 29.64 feet; thence N 28°39'56" E 59.80 feet to a point of curve; thence northeasterly along a 44.00 foot radius curve to the right, being concave to the southeast, having a chord bearing N 59°47'24" E, an arc distance of 47.80 feet; thence S 80°51'12" E 20.74 feet to the point of beginning.

PARCEL "C" (Proposed Tennis Courts)

That portion of Government Lot 1 in Section 4, Township 24 North, Range 4 East W.M., and a portion of Tract C and of Block 3 of Seattle Homestead Association, First Addition to Seattle, according to the plat recorded in Volume 1 of plats, page 129, records of said county and portion of Twenty Second Ave. S. described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) LL 64+58.92 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island; Sec. 1, Jct. SR 5 to Bradner Place S. and 442.12 feet northerly therefrom; thence easterly, to a point opposite HES LL 65+78.89 on said LL Line Survey and 444.82 feet northerly therefrom; thence southerly, to a point opposite said HES LL 65+81.59 and 324.85 feet northerly therefrom; thence westerly, to a point opposite HES LL 64+61.62 on said LL Line Survey and 322.15 feet northerly therefrom; thence northerly, to the point of beginning.

Exh. B  
2 of 6

Rev. 2/10/97

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PARCEL "D" (Existing and Proposed Basketball Courts)

That portion of Block 3 and the alley within said Block, Seattle Homestead Association, First Addition to Seattle, according to the plat recorded in Volume 1 of plats, page 129, records of said county described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) LL 66+76.30 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S. and 408.40 feet northerly therefrom; thence southeasterly, to a point opposite HES LL 67+55.27 on said LL Line Survey and 392.54 feet northerly therefrom; thence southwesterly, to a point opposite HES LL 67+47.50 on said LL Line Survey and 348.20 feet northerly therefrom; thence southeasterly, to a point opposite HES LL 68+26.30 on said LL Line Survey and 334.40 feet northerly therefrom; thence southwesterly, to a point opposite HES LL 68+07.60 on said LL Line Survey and 227.30 feet northerly therefrom; thence northwesterly, to a point opposite HES LL 67+28.80 on said LL Line Survey and 241.00 feet northerly therefrom; thence northeasterly, to a point opposite HES LL 67+36.52 on said LL Line Survey and 285.37 feet northerly therefrom; thence northwesterly, to a point opposite HES LL 66+54.88 on said LL Line Survey and 301.75 feet northerly therefrom; thence northeasterly, to the point of beginning.

PARCEL "E" (Tract 37 Screening Fence)

A portion of the alley lying within Block 1, Bradner's Addition to the City of Seattle, according to the plat recorded in Volume 5 of plats, page 49, records of said county described as follows:

Beginning at the intersection of the south line of Lot 11, Block 1 of said Bradner's Addition with a line drawn parallel with the Rel. Empire Way S. Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island and 40 feet easterly therefrom; thence easterly, to the southeast corner of Lot 22, Block 1 of said Bradner's Addition, thence south 2 feet; thence west, parallel with the south line of said Block 1, to intersect said line drawn 40 feet easterly of and parallel with the Rel. Empire Way S. Line Survey; thence north, along said parallel line, 2 feet to the point of beginning.

PARCEL "F" (Sportsfield)

Portion of Block 5, Seattle Homestead Association, First Addition to Seattle, according to the plat thereof recorded in Volume 1 of plats, page 129, records of said county; and

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3 of 6

Rev. 2/10/97

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portion of Block 4, Monroe's First Addition to the City of Seattle, according to the plat thereof recorded in Volume 3, of plats, page 73, records of said county; and portion of South Atlantic Street; and portion of the SR 90 Highway right of way as it existed prior to February 29, 1980, all lying within a tract described as follows:

Beginning at a point on the south right of way line of South Atlantic St. that is opposite Highway Engineer's Station (hereinafter referred to as HES) LL 74+69.18 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S; thence westerly, to a point opposite HES LL 71+87.59 on said LL Line Survey and 403.86 feet southerly therefrom; thence northerly, to a point opposite HES LL 71+91.56 on said LL Line Survey and 329.55 feet southerly therefrom; thence westerly, to a point opposite HES LL 70+80.22 on said LL Line Survey and 326.23 feet southerly therefrom; thence northerly, to a point opposite HES LL 70+85.77 on said LL Line Survey and 137.34 feet southerly therefrom; thence easterly, to a point opposite HES LL 74+68.67 on said LL Line Survey and 136.62 feet southerly therefrom; thence southerly, to the point of beginning.

PARCEL "G" (Urban Peace Circle)

Portion of the SR 90 highway right of way as it existed prior to February 29, 1980 within Government Lot 4 of Section 4, Township 24 North, Range 4 East, W.M. lying within a 43.10 foot radius circle the radial center of which is located at a point opposite Highway Engineer's Station LL 82+38.94 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S. and 267.88 feet southerly therefrom.

PARCEL "H" (Existing Tennis Courts)

Portion of the south half of the southeast quarter of Section 4, Township 24 North, Range 4 East, W.M. within the SR 90 highway right of way as it existed prior to July 6, 1979 lying within a tract described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) LL 84+30.18 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S. and 101.98 feet southerly therefrom; thence easterly, to a point opposite HES LL 84+71.38 on said LL Line Survey and 101.69 feet southerly therefrom; thence northerly, to a point opposite HES LL 84+71.30 on said LL Line Survey and 89.89 feet southerly therefrom; thence easterly, to a point opposite HES LL 85+50.37 on the LL Line Survey of SR 90, Jct. SR 5 to W.

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4 of 6

Rev. 2/10/97

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Shore Mercer Island: Sec. 2, Bradner Place S. to W. Shore Mercer Island and 89.33 feet southerly therefrom; thence southerly, to a point opposite HES LL 85+50.45 on said LL Line Survey and 101.13 feet southerly therefrom; thence easterly, to a point opposite HES LL 86+31.16 on said LL Line Survey and 100.56 feet southerly therefrom; thence southerly, to a point opposite HES LL 86+31.23 on said LL Line Survey and 110.56 feet southerly therefrom; thence westerly, to a point opposite HES LL 85+41.23 on said LL Line Survey and 111.20 feet southerly therefrom; thence southerly to a point opposite HES LL 85+42.06 on said LL Line Survey and 222.15 feet southerly therefrom; thence westerly, to a point opposite HES LL 84+31.19 on the LL Line Survey of said SR 90, Sec. 1 and 223.06 feet southerly therefrom; thence northerly, to the point of beginning.

**PARCEL "I" (Children's Play Area)**

Portion of the Southeast Quarter of the Southeast Quarter of Section 4, Township 24 North, Range 4 East, W.M. within the SR 90 right of way as it existed prior to July 6, 1979, lying within a tract described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) LL 86+48.95 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 2, Bradner Place S. to W. Shore Mercer Island and 135.75 feet southerly therefrom; thence easterly, to a point opposite HES LL 86+86.85 on said LL Line Survey and 135.75 feet southerly therefrom; thence northerly, to a point opposite said HES LL 86+86.85 and 105.75 feet southerly therefrom; thence easterly to a point opposite HES LL 87+67.75 on said LL Line Survey and 105.75 feet southerly therefrom; thence southerly, to a point opposite said HES LL 87+67.75 and 204.35 feet southerly therefrom; thence westerly, to a point opposite HES LL 86+74.46 on said LL Line Survey and 204.35 feet southerly therefrom; thence northwesterly along a 105.00 foot radius curve to the right, being concave to the northeast, chord bearing N 18°32'58" W, an arc distance of 74.76 feet to the point of beginning.

**PARCEL "J" (East Portal Mt. Baker Ridge Viewpoint)**

Portions of Blocks 59 & 60 and of Lake Washington Blvd. s. formerly Washington Ave. and of S. Day St. formerly Walnut St. westerly thereof, Burke's Second Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of plats, page 248, records of said county, lying within a tract described as follows:

Exh. B  
5 of 6

Rev. 2/10/97

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Beginning at a point on the south right of way line of S. Irving St. that is opposite Highway Engineer's Station (hereinafter referred to as HES) LL 103+26.41 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island; Sec. 2, Bradner Place S. to W. Shore Mercer Island; thence westerly along said south right of way line to a point opposite HES LL 102+43.68 on said LL Line Survey; thence southerly, to a point opposite HES LL 102+42.17 on said LL Line Survey and 79.03 feet northerly therefrom; thence N 87°45'11" W. 12.00 feet; thence S 02°23'23" W 12.05 feet; thence S 20°49'29" W. 25.30 feet; thence S 02°23'23" W 70.50 feet; thence S 16°02'43" E 14.18 feet; thence easterly to a point opposite HES LL 102+41.03 on said LL Line Survey and 40.96 feet southerly therefrom; thence southerly, to a point opposite HES LL 102+38.57 on said LL Line Survey and 300.95 feet southerly therefrom, said point being the northwest corner of Lot 3, Block 60, of said Burke's Second Addition; thence S 87°36'37" E, along the north line of said Lot 3, a distance of 29.17 feet; thence N 02°23'23" E 301.24 feet; thence N 01°56'59" E 22.72 feet; thence S 88° 24' 10" E 8.20 feet; thence along a 39.25 foot radius curve to the left, concave to the northwest, with a chord bearing N 66°44'44" E, an arc distance of 34.40 feet; thence along a 56.25 foot radius curve to the left, concave to the northwest, with a chord bearing N 17°19'24" E, an arc distance of 47.75 feet; thence S 81°55'39" W 0.27 feet; thence N 00°58'24" W 8.58 feet; thence N 05°38'22" W 30.66 feet; thence N 06°12'58" W 21.65 feet; thence N 03°12'01" W 10.28 feet; thence N 05°44'55" E 9.41 feet; thence N 10°38'27" E 6.40 feet; thence N 18°31'16" W 6.04 feet; thence N 26°11'14" W 7.47 feet; thence N 20°57'56" W 10.89 feet; thence N 05°45'09" W 11.44 feet; thence N 12°06'04" E 12.48 feet; thence N 30°43'57" E 15.14 feet; thence N 51°42'58" E 15.61 feet; thence N 48°28'06" E 2.67 feet, to the point of beginning.

The lands herein described contain the following areas: Parcel "A" 32,230 square feet, more or less, Parcel "B" 8,050 square feet, more or less, Parcel "C" 14,400 square feet, more or less, Parcel "D" 17,610 square feet, more or less, Parcel "E" 560 square feet, more or less, Parcel "F" 94,710 square feet, more or less, Parcel "G" 5,835 square feet, more or less, Parcel "H" 15,260 square feet, more or less, Parcel "I" 10,025 square feet, more or less and Parcel "J" 26,940 square feet, more or less, the specific details concerning all of which may be found on sheets 3, 5, 6, 7, 8 & 9 of that certain right of way plan entitled SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S. and sheets 3 and 4 of that certain right of way plan entitled SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 2, Bradner Place S. to W. Shore Mercer Island, now of record and on file in the Office of the Secretary of Transportation at Olympia, Washington, bearing dates of approval February 29, 1980 and July 6, 1979 respectively.

Exh. B  
6 of 6

Rev. 2/10/97

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# LEVEL OF CARE

		NATIVE	LOW	MEDIUM	HIGH
GRASS HEIGHT:	Turf			2-3" 15 Mow/Year	1.5-2" 30 Mow/Year
	Rough	Unmown Meadow	6-9" 4 Mow/Year	3-5" 8 Mow/Year	
EDGE DEFINITION:		None	None	Chemically	Chemically & Mechanically Clean, Sharp, Defined Boundary
PLANT CARE:	Pruning	None	None	Perimeter	Shearing & Shaping
	Fertilization	None	25% per year	50% per year	100% per year
	Irrigation	None	None	Cont. Operation 2nd Priority	Cont. Operation 1st Priority
PLANT REPLACEMENT:		None	None	As Time Allows	Immediate
DANGER TREES:		Immediate Removal of Danger Trees			
WEED CONTROL:		Noxious Only	Noxious & Invasive	Seasonal	Weed-Free Appearance
NOXIOUS WEEDS:		NO NOXIOUS WEEDS			
MULCH:		None	None	None	15% Per Year
DISEASE/PEST CONTROL:		None	Plant Survival	Plant Survival	Appearance
VANDALISM/LOSS (Except Plants):		None	Limited	Repair/Replacement/Cleaning	
LITTER CONTROL:		Annual	Annual	4 Times Per Year	20 Times Per Year
PAVED AREAS (Including Trails and Active Recreation Surfaces):		Safe, Clean, Smooth, Litter Free, Snow & Ice Removed, Patch, Seal As Required			

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GM1319

Exhibit "C"

AIRSPACE LEASE

ACTIVE RECREATION AREAS

DAY STREET WATERFRONT AREA

AA-1-10543  
IC:1-17-05679

AIRSPACE LEASE

THIS IS A LEASE entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, hereinafter called "WSDOT," and THE CITY OF SEATTLE, hereinafter called the "Lessee".

WHEREAS, the land and premises hereinafter described to be leased to the Lessee are not presently needed exclusively for highway purposes; AND WHEREAS, the WSDOT is granted authority to lease property under RCW 47.12.120; AND WHEREAS, the WSDOT and Lessee deem it to be in the best public interest to enter into this lease; AND WHEREAS, Lessee acknowledges that WSDOT would not have entered into this Lease and agreed to allow the Lessee to develop the Premises for a public boat launch and dock and other related uses except for Lessee's promise to maintain the leased premises at Lessee's expense;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances described herein, IT IS MUTUALLY AGREED THAT:

1. PREMISES. The WSDOT does hereby lease to the Lessee and the Lessee does hereby lease from WSDOT the following areas collectively comprising approximately 3.96 Acres:

- a. Upland portion of WSDOT right of way approximately 1.80 acres in area; and
- b. Underwater portion of WSDOT right of way to Inner Harbor Line approximately 2.16 acres.

all of which are and shall be identified by blue shading on Exhibit "A," which is attached hereto and by this reference incorporated herein and are and shall be hereinafter collectively referred to as the "Premises". The Premises is legally described as follows:

Exhibit 5 to Open Space And Recreation  
Area I-90 Maintenance, Redevelopment  
And Land Conveyance Agreement

FINAL (2/13/97)

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Lots 1 through 9, Block 80 and Lot 1, Block 81, Burke's Second Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of plats, page 248; also

Lots 1 through 9, Block 60 and Lot 1, Block 61, map of Lake Washington Shore Lands; also

The Day Street right of way lying between the East right of way line of Lakeside Ave. S. and the Inner Harbor line.

Subject to an easement over the south 6 feet of said tract as set forth in instruments recorded under Auditor's File No.'s 7411150381 and 8002110691.

The lands herein described contain an area of 3.96 Acres, more or less, the specific details concerning all of which are to be found within that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia and bearing date of approval July 6, 1979.

2. **TERM.** The term of this Lease shall commence on the date it is fully executed and shall continue in full force and effect thereafter for a period of 55 years or until expiration or termination pursuant to the provisions elsewhere herein, whichever is the earlier. The Lessee shall have the option of continuing its tenancy of the Premises for additional twenty (20) year terms; Provided, that at the time the renewal is scheduled to commence, the Lessee is in substantial compliance with all the terms and conditions of this Lease.

3. **SIGNAGE.** Within ninety days after the commencement of this Lease, Lessee, at its expense, shall erect and maintain permanent signs approved by WSDOT as to quantity, location, and design, which approval shall not be withheld unreasonably, stating as follows:

"This public park is located on highway right of way under an agreement between The City of Seattle and the Washington State Department of Transportation."

4. **CONSIDERATION.** The Lessee's assumption of maintenance responsibilities for the Premises as specified herein serves as consideration for this Lease.

5. **NONAPPLICABILITY OF RELOCATION ASSISTANCE.** The Lessee acknowledges that the signing of this Lease does not entitle the Lessee to assistance under the Uniform Relocation and Real Property Acquisition Act (chapter 8.26 RCW).

6. **USE OF PREMISES.**

a. Use Authorized By WSDOT: No use other than the maintenance and operation of the Premises for a public boat launch and dock and other similar uses shall be permitted without the

prior written approval of the WSDOT. In using the Premises, the Lessee shall comply with all policies and regulations heretofore or hereafter promulgated by WSDOT relative to the safety of the motoring public and the safety and operation of the highway facility that are transmitted, in writing, to the Lessee not less than thirty (30) days prior to the date the Lessee is obligated to comply with the same (except for emergency policies and regulations, which shall be effective immediately upon their adoption and the receipt by the Lessee of the text thereof and notice from the WSDOT of its emergency adoption of the same).

b. Compliance With Law: In using the Premises, it is expressly agreed that Lessee must comply with all applicable federal, state and local laws, ordinances, and regulations, including environmental requirements that are in force or that may hereafter be in force, and shall secure all necessary permits and licenses. Direct access to ramps or traveled lanes of limited access highways is not permitted.

c. Flammable/Hazardous Substances: Except as otherwise provided herein, the Lessee shall not store, bring or allow to be brought onto the Premises any toxic or hazardous substances as defined under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or Federal Superfund) (42 U.S.C. § 9601 et seq.), and the Washington Model Toxics Control Act (MCTA), RCW 70.105D et seq. or flammable substances, which flammable substances include but are not limited to explosives, petroleum products, paint, solvents, and resins, without the express written permission of WSDOT.

WSDOT hereby grants permission for the Lessee to bring onto the Premises and to reasonably use toxic, hazardous or flammable substances that are regularly used on Lessee's property to carry out the Lessee's own park and recreation operation and maintenance objectives and functions or are otherwise deemed by the Lessee to be necessary or appropriate to carry out the Lessee's maintenance responsibilities under this Lease. Pesticides may be used for landscape maintenance in accordance with manufacturer's directions at the Lessee's risk. Disposal of any and all toxic, hazardous, or flammable substances stored, brought on or allowed to be brought onto the Premises by the Lessee shall be done in a legal manner by Lessee.

Lessee hereby agrees to indemnify, defend and hold WSDOT harmless for any costs or liabilities associated with the removal or remediation of any hazardous, toxic or flammable substances, including gasoline or other petroleum product, that has been released or otherwise has come to be located upon the Premises by the activities of the Lessee, and any of its employees, agents, licensees, contractors, or the contractor's subcontractors. "Costs" shall include but not be limited to all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include but not be limited to the Comprehensive

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Environmental Response, Comprehensive, and Liability Act, 42 U.S.C. Section 9601; the Clean Water Act, 33 U.S.C. Section 1251; the Clean Air Act, 42 U.S.C. Section 7401; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; and the Washington Model Toxics Control Act, RCW 70.105D.010

Lessee further agrees to retain any and all liabilities from the offsite disposal; handling, treatment, storage, or transportation of any toxic, hazardous or flammable substances, including petroleum products, removed from the Premises and that liabilities under this section (Flammable/Hazardous Substances) shall survive the expiration or termination of this Lease.

d. Signage, Display Lighting & Advertising: Signs, display lights, and advertising media/materials are not permitted unless completely detailed on a separate plan sheet and have received specific prior written approval by WSDOT.

e. Special Events: The Lessee may issue permits for the presentation of special events or uses on the Premises provided that WSDOT is given 10 days prior written notice describing the event and each such intended event meets the following minimum requirements and any other reasonable requirement deemed necessary by WSDOT:

(1) The event or use does not affect or impact the traveled lanes or the operation of I-90 or its ramps, and is consistent with the park-like atmosphere intended for the Premises;

(2) Ten percent (10%) of all event, use, permit or other fees collected by the Lessee for allowing the event or activity on the Premises, and ten percent (10%) of the gross receipts for any commercial, money-making event sponsored by the Lessee or any other Lessee-authorized group on the Premises shall be applied as a credit against the money that is owed to the City Lessee by the WSDOT for maintenance services under the separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, which by this reference is incorporated herein; Provided, that no payment percentage will be charged on event, use, permit or other fees that directly reimburse the Lessee for services provided by the Lessee that are directly associated with such event, use or activity (e.g. police services). The Lessee shall maintain adequate records of events, uses, fees, and gross receipts received in relation to said events or uses and shall provide said records to the WSDOT within thirty (30) days after the end of said event or use;

(3) The Lessee, in the case of a Lessee produced event, warrants that it is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the Lessee is not self-insured, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;

(4) The Lessee-authorized group, in the case of other than Lessee produced events, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;

(5) The Lessee, in the case of a Lessee produced event, agrees to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the special event activity;

(6) The Lessee, in other than Lessee produced events, shall require the permittee to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the activities authorized by the permit;

(7) The Lessee assumes responsibility for all clean up and repair of any damage resulting from the use or event.

7. **PERSONAL PROPERTY.** WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind, stored, kept, used or maintained in or about the Premises, except for such claims or losses that are caused by WSDOT, its employees, or any of its authorized agents, contractors, or contractor's subcontractors.

8. **ENVIRONMENTAL AUDITS.** Lessee will reasonably cooperate in any environmental audits conducted by WSDOT's staff or independent third parties. WSDOT shall ensure that no environmental audit is undertaken with respect to the Premises without prior written notice to the Lessee, and shall require that in the conduct of each such audit, the Lessee's use and occupancy of the Premises not be unreasonably disturbed. Lessee will reimburse WSDOT for the cost of any audit through which Lessee-caused contamination is found. Lessee will provide WSDOT with notice of any inspections with respect to the Premises that are known to Lessee, notices of violations, and orders to clean up contamination. Lessee will permit WSDOT to participate in all settlement or abatement discussions regarding environmental contamination remediation measures that may be required of the Lessee under law or this Lease. In the event the Lessee fails to commence environmental contamination remediation measures as duly directed by a state, federal, or local regulatory agency within 90 days of the date of any notice to take such measures, the WSDOT may elect to perform such work, and Lessee covenants and agrees to reimburse WSDOT for all direct and indirect costs associated with WSDOT's work if such remediation work was a Lessee obligation under law or this Lease.

9. **WSDOT HAZARDOUS SUBSTANCE INDEMNIFICATION.** WSDOT hereby agrees to indemnify, defend and hold Lessee harmless for any costs or liabilities associated with the removal or remediation of any hazardous substances that are: (1) located upon the Premises prior to the Lessee's occupancy of the Premises or the execution of this Lease, whichever is the earlier; and (2) which come to be located on the Premises by any acts of the WSDOT, its agents, contractors, contractor's subcontractors or employees.

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**10. MAINTENANCE RESPONSIBILITIES.**

a. The Lessee's maintenance responsibilities with respect to the Premises shall be as follows:

(1) At a minimum, maintaining such areas at a level equal to or better than the medium level of care as identified in Exhibit B attached hereto and incorporated herein by this reference;

(2) Being responsible for ensuring that the landscaping gets sufficient water to keep the landscaping alive; and if the necessary irrigation is not provided, being responsible for the replacement of landscaping that dies or is severely damaged due to lack of water;

(3) Maintaining the drainage systems within the Premises, including the biofiltration swale;

(4) Removing any and all graffiti in the Premises; and

(5) Removing hazards to public user of the underwater portion of the Premises on an as-needed basis.

b. The WSDOT shall maintain and repair the structural components of the I-90 bridge structures, including cleaning and repainting of structural steel components thereof.

**11. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT UTILITY FRANCHISES AND PERMITS.** The WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain existing facilities and, for itself, to grant utility franchises and/or permits across the Premises; Provided, that WSDOT shall require every utility franchise and permit holder issued a permit or franchise after the execution date of this Lease, to provide to the Lessee's Superintendent of Parks & Recreation, except in an emergency, not less than forty-eight (48) hours prior written notice of any intent by such utility franchise or permit holder to enter upon or perform any work on the Premises, and in the event of an emergency, to provide prior notice to such official by telephone at 206-684-8022 (or other such telephone as may be designated, by Lessee by written notice to WSDOT) regarding such intended entry or work. WSDOT shall require the franchise or permit holder to accomplish such maintenance or installation in such a manner as to minimize any disruption to the Lessee. The WSDOT shall require all franchise/permit holders to restore paving, grading, landscaping and other improvements damaged by the entry, improvement or maintenance work by or for the utility franchise or permit holder to at least as good a condition as such paving, grading, landscaping and improvements were in immediately prior to the commencement of such franchisee's or permittee's improvement work.

The Lessee will not disturb markers installed by a franchise/permit holder. Prior to tilling of the soil, or the



undertaking of any other operation of the Lessee in which earth, rock, or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater, the Lessee must provide notice to all owners of underground facilities by calling 1-800-424-5555 (or other such telephone as may be subsequently designated). Furthermore, the Lessee must comply with all provisions of Ch. 19.122 RCW relating to underground facilities. Violation of this statute is subject to a possible civil penalty.

## 12. PROTECTION OF WSDOT STRUCTURES.

a. The Lessee shall prohibit any trenching or excavation deeper than four (4) feet below existing grade on the Premises unless the WSDOT has given its prior written consent to such excavation. The trench or excavation shall be backfilled and compacted to match existing grade in a reasonable time after opening;

b. In the event the I-90 bridge structure or any appurtenance thereto is damaged by any activity authorized under this Lease and undertaken by or for the Lessee, the Lessee shall reimburse the reasonable costs and expenses incurred by the WSDOT in repairing such damage;

c. The Lessee, at its own expense, shall make whatever provisions beyond those required of the WSDOT under Section 15 hereof the City deems necessary to protect users of the Premises from any foreseeable hazards resulting from use and operation of the highway.

13. **TAXES, ASSESSMENTS AND UTILITIES.** The Lessee shall pay that share of all assessments imposed on or with respect to the Premises that is the Lessee's obligation under RCW 79.44.010, and also pay all taxes which may hereafter be levied or imposed upon the interest of the Lessee or by reason of this Lease. The Lessee is responsible for and agrees to pay for utilities or other services which serve the Premises.

## 14. IMPROVEMENTS.

a. WSDOT shall not be required to make any improvements to or perform any maintenance or repairs upon any part of the Premises, except as provided herein.

b. **WSDOT's Approval of Lessee's Plans for Design and Construction:** The Lessee shall not be permitted to make any additional improvements to the Premises without the prior written approval of the WSDOT. The Lessee covenants that any regrading or improvements to be constructed on the Premises by the Lessee will not at any time during or after construction either damage, threaten to damage or otherwise adversely affect any part or element of the highway facility under or immediately adjacent to the Premises or the operation thereof as then developed and used. The WSDOT shall be furnished with two sets of complete plans,

details and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises by the Lessee, and no such work shall be done by the Lessee on the Premises without prior written approval of such plans by the WSDOT, which approval shall not be unreasonably withheld or delayed. All construction work by the Lessee shall be done in conformity with the plans and specifications as approved by the WSDOT. The WSDOT may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure compliance with the WSDOT-approved plans and specifications, protection of all parts and elements of the highway facility and compliance with WSDOT's construction and safety standards. The improvements shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and construction when necessary.

c. WSDOT shall construct on the Premises in the vicinity of Day Street and the Lake Washington Shoreline landscaping, a trail, a parking area, a ramp for the launching of boats by hand (rather than by the use of a motor vehicle and trailer), and entry and exit gate(s) for another active recreation area, all consistent with plans and specifications for such work that have been or are hereafter approved by the Lessee's Superintendent of Parks & Recreation. Site improvements are scheduled to be completed by October 31, 1996. Landscaping shall be deemed complete on October 31, 1997, or upon completion of a one-year plant establishment period for plants and lawn, whichever is earlier.

d. Liens: Nothing in this lease shall be deemed to make the Lessee the agent of the WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. The Lessee acknowledges that the WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the Lessee.

15. WSDOT'S RIGHT OF ENTRY AND INSPECTION. The WSDOT, for itself, its agents and contractors and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for inspection purposes, including the inspection of any excavation, construction or maintenance work being done by the Lessee. Further, the WSDOT, for itself, its agents and contractors, and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for the purpose of maintenance, construction or reconstruction of the highway facility or any element thereof. Provided, no such entry, for the purpose of maintenance, construction or reconstruction shall occur without at least seven (7) days' prior written notice to the Lessee. In the event of an emergency only prior notice by telephone to Superintendent of Parks and Recreation at 206-684-8022 (or such other person or telephone number as may be designated by Lessee by written notice to WSDOT) shall be required.

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The WSDOT shall in no way be responsible for any incidental or consequential damages due to loss of use by Lessee caused by any such entry.

In the event of any such entry, inspection, maintenance, construction or reconstruction of the highway facility or any element thereof by the WSDOT, or any of its agents, employees, contractors, or contractor's subcontractors, WSDOT shall ensure that such entry and work is performed in such a manner as to protect public safety and minimize any disruption to the Lessee. Following the completion of such inspection, maintenance, construction or reconstruction, any paving, grading, landscaping and other improvements on the Premises damaged by such entry, inspection, construction or reconstruction work shall be restored or repaired by or for the WSDOT to at least as good a condition as such paving, grading, landscaping and other improvements were in immediately prior to the commencement of such activity.

The parties expressly agree that nothing herein precludes any WSDOT employee, agent or contractor from using the Premises as a member of the general public.

16. **INSURANCE.** Lessee warrants that it is self-insured, and agrees to provide acceptable evidence in the form of a certification of its self-insured status to WSDOT or, if the Lessee is not self-insured, secure liability insurance in the form and amount reasonably determined necessary by WSDOT; Provided, that WSDOT may reasonably adjust said coverage requirements from time to time based on risk factors and the adequacy of the stated policy limits.

17. **HOLD HARMLESS/INDEMNIFICATION.**

a. Lessee's Indemnification: Lessee, its successors or assigns, will protect, save, and hold harmless and defend the WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors on the Premises under this Lease.

b. WSDOT's Indemnification: The WSDOT shall protect, save, and hold harmless and defend the Lessee and its officers, employees, and authorized agents from all claims, actions, costs, damages, or expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of WSDOT related to activities reserved to the WSDOT, or any of its officers, agents, employees, contractors or contractor's subcontractors on the Premises under this Lease.

c. Concurrent Negligence or Actions Covered by RCW 4.24.115: If the claims or damages are caused by or result from the concurrent negligence of (i) the WSDOT, or any of its officers,

agents, employees, contractors, or contractor's subcontractors, and (ii) the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors, or involves any action covered by RCW 4.24.115, a party's indemnification obligation hereunder shall be valid and enforceable only to the extent of the negligence of such party or any of its officers, agents, employees, licensees, invitees, contractors, or the contractor's subcontractors, as appropriate.

**18. NONDISCRIMINATION.** The Lessee, for itself and its successors, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be unlawfully excluded from participation in, be unlawfully denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the Premises, that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no such unlawful discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, that such unlawful discrimination shall not be practiced against the public in their access to and use of the facility and services provided for public accommodation constructed or operated on, over, or under the right of way, and that the Lessee shall use the Premises in compliance with all other requirements imposed pursuant to Ch.49.60 RCW and 49 C.F.R. Part 21. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the WSDOT to terminate this Lease in accordance with the procedures set forth herein.

**19. DEFAULT.** Upon the material breach of this Lease by either party hereto, the other party may give to the party allegedly in breach notice specifying the nature of such breach, the period of time within which such breach must be cured, and at the option of the party giving such notice, such party's intention to declare a default and to terminate this Lease in the event such breach is not cured within the specified cure period. Neither party shall be in default unless it fails to perform an obligation required of it within the cure period, which time shall not extend more than thirty (30) days after the date of the notice of breach, except that if the nature of the obligation is such that more than thirty (30) days is required for performance or cure, then the party alleged in breach shall not be in default if such party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The non-defaulting party may in writing, at its option, extend the cure period if in the judgment of the non-breaching party, an extension is justified. After expiration of the cure period, and any extension thereof, if one or more defaults remains unremedied, this Lease shall terminate without further notice; and Provided, that if the breach is by the Lessee, WSDOT shall have the option of giving notice in writing of its intention to cure a non-emergent default or verbal notice if the default is deemed an emergency by the

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WSDOT, by itself or through use of agents or contractors. The Lessee agrees to reimburse WSDOT within thirty (30) days of the date of WSDOT's invoice for resultant direct costs WSDOT incurs in curing such default or, in the alternative, the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto in an amount equal to the cost incurred in curing the default.

20. **ASSIGNMENTS.** Neither this Lease nor any rights created by it may be assigned; Provided, that nothing herein shall prohibit the Lessee from subcontracting with one or more third parties for the performance of the maintenance work described herein, subject to the prior written approval of the WSDOT, which shall not be unreasonably withheld. Any such contract shall not relieve the Lessee of its obligation to maintain the Premises as agreed herein.

21. **BINDING CONTRACT.** This Lease shall not become binding upon the State of Washington unless and until accepted and approved for the Washington State Department of Transportation by the Secretary or his duly authorized representative.

22. **MODIFICATIONS.** This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

23. **INTERPRETATION.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

24. **INTERRUPTION, TERMINATION, AND PARTIAL TERMINATION.**

a. Interruption: In the case of a transportation need not expected to last until the end of the 55-year term, WSDOT shall have only the right to interrupt this Lease for the period of need, at the end of which WSDOT shall promptly restore the Premises to a physical condition that is equal to or better than the condition it was in immediately prior to such interruption, and promptly thereafter shall restore use of the Premises to the Lessee. During any such period of interruption, Lessee shall have no responsibility or obligation hereunder to perform any maintenance work with respect to the area of the Premises that is affected by such interruption.

b. Termination by WSDOT: WSDOT may terminate this Lease in whole or in part:

(1) Immediately if the Premises is needed for an emergency transportation purpose;

(2) On 180 days' written notice, if the Premises is

needed for a transportation need. If the transportation need, in WSDOT's determination, does not require terminating the use and occupancy rights with respect to all of the Premises, the Lessee shall continue to lease the unaffected remainder of the Premises under the terms and conditions of this Lease; Provided, that if the parties agree that specific use areas within the Premises are no longer functional as a result of partial termination by WSDOT, WSDOT shall redevelop such affected areas to a mutually acceptable condition and Lessee shall continue to maintain the Premises as provided herein. For example, if the partial termination leaves an unusable boat launching area remaining within the Premises, the remaining area will be redeveloped by WSDOT to a mutually acceptable condition at WSDOT's expense, and Lessee shall thereafter resume maintenance of such affected area as required by this Lease.

(3) In the event it becomes apparent, in WSDOT's sole judgment, that the Premises have ceased to be used or have been abandoned for a continuous period of sixty (60) days, the WSDOT, at its option, shall have the right to terminate this Lease, provided due notice of such apparent default and the WSDOT's intent to terminate this Lease shall be given to the Lessee not less than thirty (30) days prior to the proposed termination date together with a demand to cure such default within such thirty (30) day cure period.

(4) For default as provided herein.

c. Termination by Lessee for Default by WSDOT: The leasing of the Premises may be terminated by the Lessee if the WSDOT has breached this Lease and, after the WSDOT's receipt of notice of such breach, such breach has not been cured within the time period specified in Section 19 hereof. For purposes of termination under this provision, the Lessee may declare any of the following a breach by the WSDOT, unless otherwise agreed to by the parties:

(1) The interruption of the Lessee's use and occupancy of the Premises or a portion thereof for a period of more than one year;

(2) The failure to redevelop within one (1) year after partial termination any remaining portion of the Premises that has become no longer functional as a result of said partial termination of this Lease by the WSDOT;

(3) The adoption of any policy or regulation by WSDOT that makes the maintenance of the Premises or any portion thereof unreasonably difficult or expensive or the use and occupancy of the Premises or any portion thereof economically or operationally unreasonable or unacceptable to the Lessee or that unreasonably limits or restricts use or occupancy of the Premises for the purposes allowed under this Lease; and

(4) The failure of the WSDOT to indemnify the Lessee as provided elsewhere herein.

25. **SUBSEQUENT USE FOR TRANSPORTATION PURPOSES.** The Lessee and the WSDOT hereby affirm that upon expiration or termination of this Lease for any reason and the subsequent use of the Premises for highway purposes, regardless of the actual use, such highway use will not be considered the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 U.S.C. 138 and 49 U.S.C. 1653(f).

26. **NOTICES.** Except as provided elsewhere herein, wherever a written notice is to be given or made, it shall be personally served or sent through the United States Postal Service by certified mail, postage prepaid, addressed to the party at the address listed for it below, or personally served on the party at the address listed below, unless such party has designated, by prior written notice, a different address:

WSDOT: Property Management Supervisor  
DEPARTMENT OF TRANSPORTATION  
Mail Stop 7338  
P. O. Box 4 7338  
Olympia, WA 98504-7338

COPY TO: Northwest Region Maintenance Engineer  
DEPARTMENT OF TRANSPORTATION  
P.O. Box 330310  
15700 Dayton Avenue North  
Seattle, WA 98133-9710

LESSEE: Superintendent  
Department of Parks & Recreation  
THE CITY OF SEATTLE  
Administration Building  
100 Dexter Avenue North  
Seattle, WA 98109

Said notices shall be effective upon receipt of notice in the manner described above.

27. **CUMULATIVE REMEDIES.** All remedies available at law or in equity to either party for breach of this Lease are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

28. **AUTHORITY OF PARTIES' REPRESENTATIVES.**

a. **Superintendent's Authority:** The term "Superintendent" as used throughout this Lease shall mean the Superintendent of the Lessee's Parks & Recreation Department or his/her successor or designee. In regard to any consent and approval rights of the City Lessee as provided herein, the Superintendent or his/her successor or designee shall have such approval right. The action of the Superintendent pursuant to or in implementation of this Lease does not constitute any official action by any other City of Seattle

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department or official that may be required by law, ordinance, rule or regulation.

b. Northwest Region Maintenance Engineer and Property Management Supervisor Authority: All references in this Lease to Northwest Region Maintenance Engineer or Property Management Supervisor shall include that official's functional successor(s).

**29. SURRENDER UPON TERMINATION.**

a. Surrender of Premises: Except as otherwise provided herein, upon termination or expiration of this Lease, the Lessee shall cease its operations on and/or use of the Premises and surrender the Premises to the WSDOT. In the event the Lessee fails to vacate and surrender the Premises on the date provided herein, it shall be liable for any and all costs to the WSDOT arising from such failure.

b. Conditions of Premises Upon Surrender:

(1) Prior to termination for convenience by the Lessee, as provided elsewhere herein, or for a Lessee default where the Lessee has not diligently attempted to cure the default, or expiration of this Lease, the Lessee shall at its expense remove all improvements, trade fixtures, equipment, furnishings, and other personal property owned and/or placed in or on the Premises by the Lessee from the Premises to be surrendered and restore the same to passive recreation use consistent with the landscaping of the I-90 Project, to WSDOT's reasonable satisfaction, unless both parties agree in writing that all or part of said improvements, trade fixtures, equipment, furnishings and other personal property shall remain on the Premises. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to the WSDOT.

(2) In the event the Lease is terminated by WSDOT because of a Lessee default and the Lessee has diligently attempted to cure the default within the cure period but was unable to do so, the Lessee shall be granted a 120 day permit to enter upon the affected Premises and to, at its expense, remove all improvements, trade fixtures, equipment, furnishings, or other personal property and restore the same to passive recreation use consistent with the landscaping of the I-90 Lid, to WSDOT's reasonable satisfaction unless both parties agree in writing that all or part of said improvements, trade fixtures, equipment, furnishings and other personal property shall remain on the Premises. The time period for said permit may be extended if in WSDOT's sole judgment, an extension is warranted. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to WSDOT. Further, Lessee hereby agrees to retain all liability and to protect, save, and hold harmless and defend WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all

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claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of the acts or omissions of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors or any person whomsoever on the Premises for which the improvement, trade fixture, equipment, furnishing, or other personal property is located until said removal and restoration is complete. The liability and indemnification obligations contained in this section shall survive the expiration or termination of this Lease.

(3) In the event the Lease is terminated by WSDOT for a transportation need or for convenience, or by the Lessee for a WSDOT default as provided elsewhere herein, the Lessee is not obligated to remove improvements, trade fixtures, equipment, furnishings and other personal property from the Premises, but has the right to remove Lessee's items it desires prior to the effective termination date.

c. Disposition of Unremoved Improvements and Property: In the event that the Lessee has not removed its improvements, trade fixtures, equipment, furnishings, and other personal property upon termination or expiration of this Lease, or as otherwise required herein, the improvements and property shall become the property of the WSDOT and WSDOT may dispose of the property and improvements at Lessee's expense in a manner prescribed by the WSDOT and the Lessee shall reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such removal and disposal within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in removing and disposing of the improvements and property; Provided, further that this provision does not apply where termination is as provided in paragraph 29.b(3) herein.

d. Failure to Restore the Premises: In the event the Lessee fails to restore the portion of the Premises to be surrendered to passive recreation use consistent with the landscaping of the I-90 Lid to the reasonable satisfaction of WSDOT upon termination or expiration of this Lease, or as otherwise provided herein, the WSDOT may restore said Premises at Lessee's expense and the Lessee will reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such restoration within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in restoring the property; Provided, further that this provision does not apply where termination is as provided in paragraph 29.b(3) herein.

30. NO WAIVER. No action other than a notice by one party to the other specifically stating that such notice has the effect of a waiver, shall constitute a waiver of any particular breach or default of such other party. No such notice shall waive a party's failure to fully comply with any other term, condition, or provision of this Lease, irrespective of any knowledge any officer, employee, or agent of the other party may have of any breach or default of, or noncompliance with, such other term, condition, or provision. No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Lease. The performance or acceptance of maintenance services for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

31. SUPERSESION OF PRIOR LEASES. This Lease represents the entire agreement of the parties with regard to the subject matter hereof and supersedes any prior agreement not incorporated herein. In the event of any inconsistency between this Lease and any prior agreement, whether written or oral, the terms of this Lease shall prevail.

32. NEGOTIATED LEASE. The parties to this Lease acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Lease are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, the parties hereto have had their respective representatives sign their names in the spaces below:

THE CITY OF SEATTLE  
Lessee

By: \_\_\_\_\_

Date: \_\_\_\_\_

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION  
WSDOT

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: Bruce Brown  
Assistant Attorney General

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IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON )  
 ) ss. (WSDOT ACKNOWLEDGMENT)  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, to me known to be the duly appointed Director, Real Estate Services, Washington State Department of Transportation, who stated, on oath, that \_\_\_\_\_ executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein set forth, and that \_\_\_\_\_ was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or type name of notary)  
Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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STATE OF WASHINGTON )  
 ) ss.  
THE COUNTY OF KING )

(CITY ACKNOWLEDGMENT)

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_

\_\_\_\_\_ to me known to be the \_\_\_\_\_ of The City of Seattle, who on oath stated that \_\_\_\_\_ executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes herein mentioned, and that \_\_\_\_\_ was authorized to execute the said instrument for and on behalf of The City of Seattle.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or type name of notary)  
Notary Public in and for the State Washington,  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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T24N. R. W.M.  
CITY OF SEATTLE

LAKE

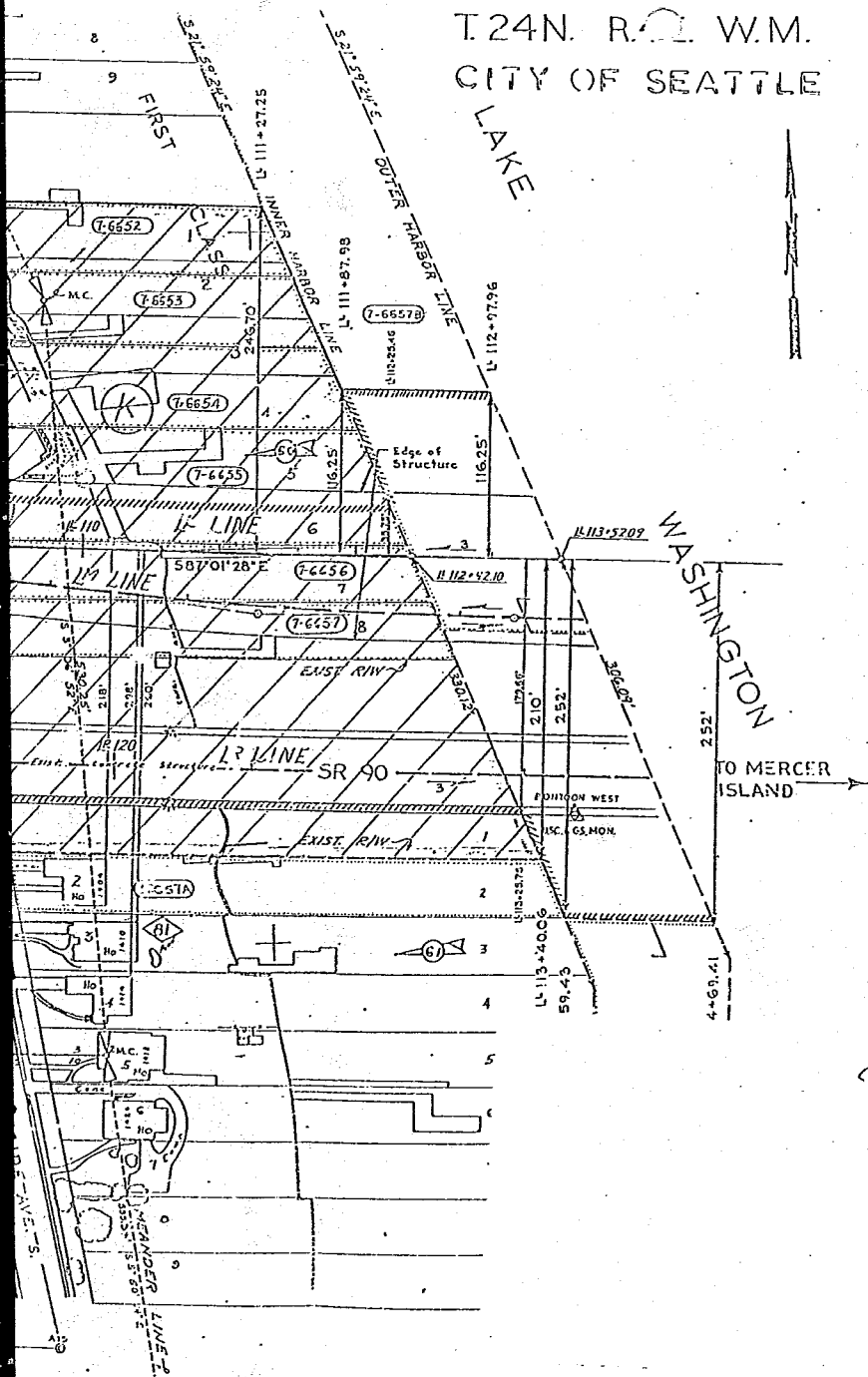


EXHIBIT "A"

C.S. SR 90

AIRSPACE LEASE

DAY STREET WATERFRONT AREA

AGREEMENT NO. AA-1-10543  
IC:1-17-05679

SHEET 1 OF 1 SHEETS 13 FEB 19

SCALE 1 IN. = 50 FT.

NOTE:

1. For Ownership Data, See Sheet No. 9.

NOTE: Scale changes on Plan Sheets

ROADWAY	PI STATION	CURVE DATA		
		Δ	R	T
LINE	104+66.52	117°42' RE	14800'	1372.66'

LEGEND

- 50' 0' 50' 100' Scale in Feet
- ACCESS TO BE PROHIBITED SHOWN THUS
- PROPERTY OWNERSHIP NUMBERS
- PROPERTY LINES
- STATE OWNED - DEPT. OF TRANSPORTATION
- EXISTING PAVED STREETS
- EXISTING GRAVEL STREETS
- RETAINING WALLS (EXISTING)
- CO-ORDINATED MONUMENTS

This plan conforms to the access provisions in the Findings and Order by the Highway Commission on November 3, 1971, as revised by Board of Review Findings and Order issued March 26, 1973, and provisions of the Memorandum Agreement approved December 21, between the cities of Seattle, Mercer Island and Bellevue; the City of Metropolitan Seattle; King County and the Washington State Dept. of Transportation.

15311

SR 90

MP 1.33 TO MP 3.2

JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 2, BRADNER PLACE S. TO  
W. SHORE MERCER ISLAND

KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
STA. 1105+50 TO STA. 1113+52.09

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

OLYMPIA, WASHINGTON

W. A. RILEY

SECRETARY



All Plans are subject to the terms and conditions of the Department of Transportation in Olympia.

R. B. Jackson  
DESIGN ENGINEER

DATE July 6, 1979

SHEET 5 OF 10 SHEETS

10/11/79	1-24-79	Revised 1/A on 11/15/79 to 1112+25.06 and on 11/15/79 to 1112+25.06	1112+25.06
10/11/79	1-24-79	Revised 1/B on 11/15/79 to 1112+25.06 and on 11/15/79 to 1112+25.06	1112+25.06
10/11/79	1-24-79	Revised 1/C on 11/15/79 to 1112+25.06 and on 11/15/79 to 1112+25.06	1112+25.06
10/11/79	1-24-79	Revised 1/D on 11/15/79 to 1112+25.06 and on 11/15/79 to 1112+25.06	1112+25.06

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# LEVEL OF CARE

		NATIVE	LOW	MEDIUM	HIGH
GRASS HEIGHT:	Turf			2-3" 15 Mow/Year	1.5-2" 30 Mow/Year
	Rough	Unmown Meadow	6-9" 4 Mow/Year	3-5" 8 Mow/Year	
EDGE DEFINITION:		None	None	Chemically	Chemically & Mechanically Clean, Sharp, Defined Boundary
PLANT CARE:	Pruning	None	None	Perimeter	Shearing & Shaping
	Fertilization	None	25% per year	50% per year	100% per year
	Irrigation	None	None	Cont. Operation 2nd Priority	Cont. Operation 1st Priority
PLANT REPLACEMENT:		None	None	As Time Allows	Immediate
DANGER TREES:		Immediate Removal of Danger Trees			
WEED CONTROL:		Noxious Only	Noxious & Invasive	Seasonal	Weed-Free Appearance
NOXIOUS WEEDS:		NO NOXIOUS WEEEDS			
MULCH:		None	None	None	15% Per Year
DISEASE/PEST CONTROL:		None	Plant Survival	Plant Survival	Appearance
VANDALISM/LOSS (Except Plants):		None	Limited	Repair/Replacement/Cleaning	
LITTER CONTROL:		Annual	Annual	4 Times Per Year	20 Times Per Year
PAVED AREAS (Including Trails and Active Recreation Surfaces):		Safe, Clean, Smooth, Litter Free, Snow & Ice Removed, Patch, Seal As Required			

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Exhibit "B" DAY STREET WATERFRONT AREA

# EAST PORTAL MT. BAKER RIDGE VIEW POINT

65 EXISTING EUROPEAN CRANBERRY  
EXISTING EUROPEAN CRANBERRY  
TRANSPLANT AS SHOWN  
SPECIAL PROVISIONS  
137 NEW 'SPRING DOUQUET'  
RUSTINUS AT THE  
VIOUS LOCATION OF EXISTING  
PEAN CRANBERRY.  
EFFECTIVELY PRUNE  
THESE SHOWNBELL  
SPECIAL PROVISIONS.  
72 EXISTING EUROPEAN CRANBERRY  
EXISTING  
FY V. MURROW MONUMENT  
LY PIGMENTED SEALER  
SPECIAL PROVISIONS.

S. IRVING ST.

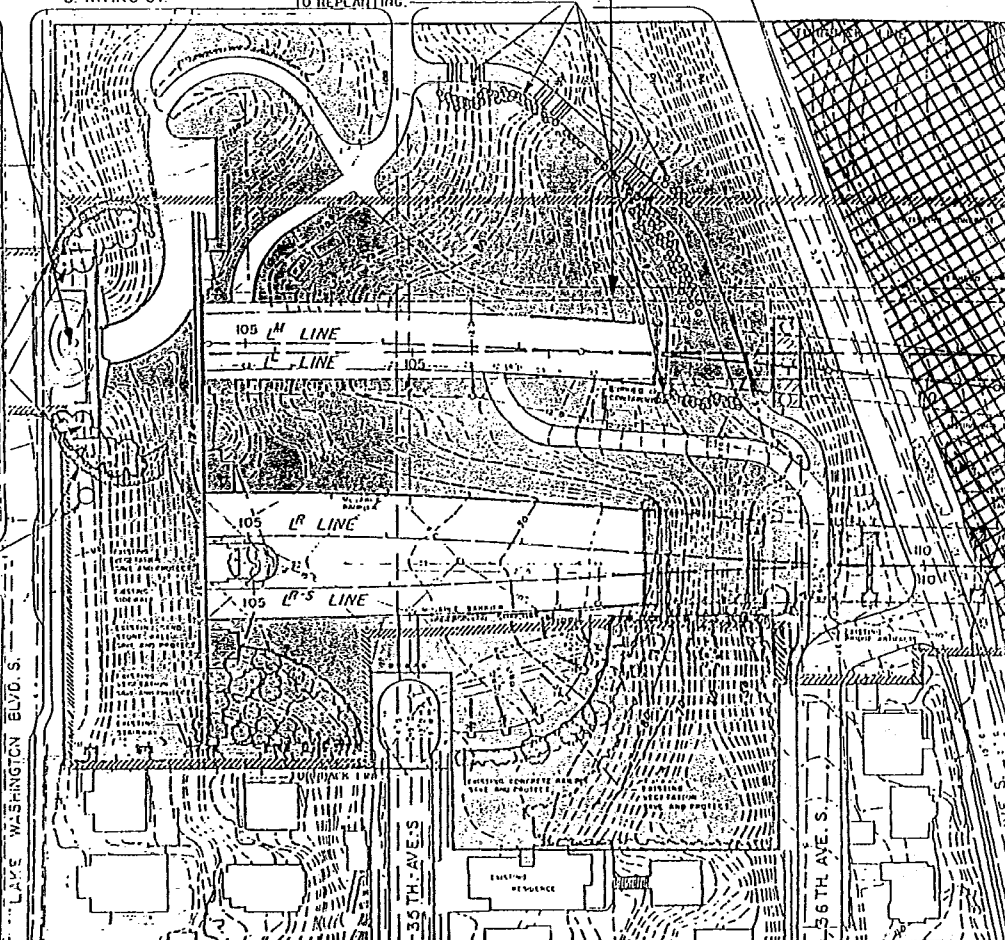
REPLANT 137 EUROPEAN CRANBERRY.  
SEE SPECIAL PROVISIONS FOR WORK  
ORDER METHODS AND REQUIREMENTS.  
STAKED LAYOUT OF PLANTING TO BE  
APPROVED BY THE ENGINEER PRIOR  
TO REPLANTING.

OVERHEAD B/P PATH  
SPOT MAINTAINED

LANDSCAPE RESTORATION REMOVE  
EXISTING UTILITY APPROVED ALUMINUM  
HAND RAIL & REPLACE WITH NEW RAIL  
NEW RAIL SHALL MATCH EXISTING RAIL

B/P PATH  
MAINTAINED

CRANBERRY.  
FOR WORK  
REQUIREMENTS.  
ING TO BE  
R PRIOR



PROJECT NO.	STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
10	WASH	10-IN-090-K4021	1	1
JOB NUMBER		10-IN-090-K4021		
91W064		UNIT 2		
CONTRACT NO.				

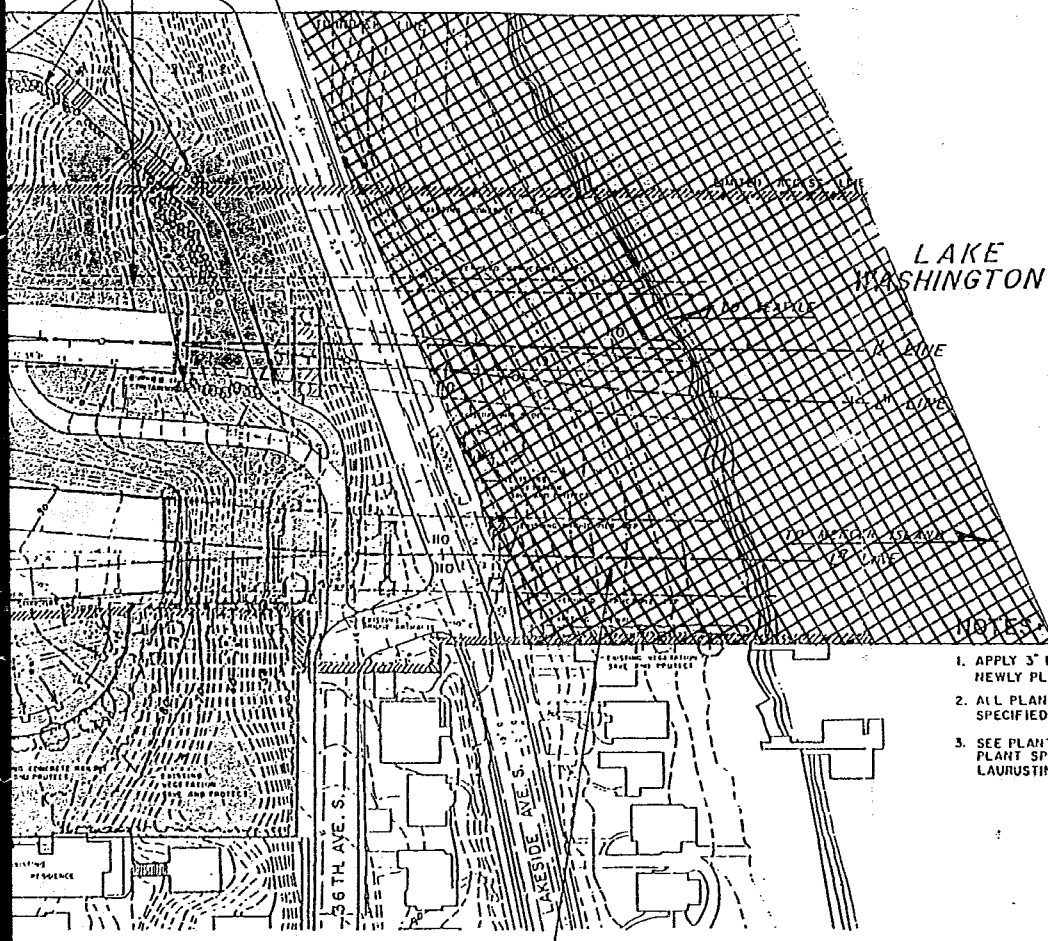
PROGRAM DEVELOPMENT  
DIVISION





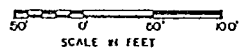
B/P PATH  
CONTAINED

LANDSCAPE RESTORATION REMOVE  
EXISTING BROKEN ANODIZED ALUMINUM  
HAND RAIL & REPLACE WITH NEW RAILING.  
NEW RAIL SHALL MATCH EXISTING HAND RAIL.



LAKE  
WASHINGTON

- NOTES:
1. APPLY 3" LAYER OF BARK MULCH AROUND ALL NEWLY PLANTED SHRUBS.
  2. ALL PLANTS SHALL BE FERTILIZED AS SPECIFIED. SEE SPECIAL PROVISIONS.
  3. SEE PLANT MATERIAL LIST SHEET 1/ FOR PLANT SPECIFICATIONS, 'SPRING BOUQUET' LAURUSTINUS.



Date: 13 FEB 1997

1319

PROGRAM DEVELOPMENT  
DIVISION



Washington State  
Department of Transportation

SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1

SP8

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Ord 118525

FILED  
97 APR 30 PM 4:56

CITY CLERK

GM 1319

**OPEN SPACE AND RECREATION AREA  
I-90 MAINTENANCE, REDEVELOPMENT AND LAND CONVEYANCE AGREEMENT  
(SEATTLE)**

THIS AGREEMENT is entered into between THE CITY OF SEATTLE (hereinafter "the City") and the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (hereinafter "WSDOT").

WHEREAS, the WSDOT owns the areas marked in green on Exhibit 1 and, as such, is responsible for the maintenance of the landscaping and other improvements thereon; and

WHEREAS, WSDOT and the City, acting by and through the Department of Parks and Recreation, have agreed to execute concurrently with this Agreement a separate Airspace Lease, whereby the City will lease from WSDOT certain active recreation areas on the sites marked in blue on Exhibit 1, and WSDOT will transfer to the City the responsibility for the maintenance and operation of such areas under that separate Airspace Lease; and

WHEREAS, WSDOT and the City have agreed to execute concurrently with this Agreement a separate Ground Lease, whereby the City will lease from WSDOT the site illustrated in yellow on Exhibit 1, and WSDOT will transfer to the City the responsibility for the maintenance and operation of such area under that separate Ground Lease; and

WHEREAS, WSDOT and the City have agreed to execute concurrently with this Agreement a separate Airspace Lease, whereby the City will lease from WSDOT certain other land referred to as the Day Street Waterfront Area illustrated in blue with double hatchures on Exhibit 1, and WSDOT will transfer to the City the responsibility for the maintenance and operation of such area under that separate Airspace Lease; and

WHEREAS, WSDOT agrees to transfer to the City and the City agrees to accept certain property depicted in blue, shaded with single hatchures, on Exhibit 1 as replacement land for City park land acquired by WSDOT for the SR 90, Junction SR 5 to Vicinity Junction SR 405 Project, and the WSDOT agrees to execute separate Quitclaim Deeds transferring said property concurrently with or in advance of this Agreement; and

FINAL (2/13/97)

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WHEREAS, the City is willing to assume and undertake, under certain terms and conditions, various maintenance responsibilities with respect to the landscaping and other improvements in the areas marked in green on Exhibit 1 for and on behalf of WSDOT, and WSDOT is willing to compensate the City for the City's performance of such work; and

WHEREAS, it is desirable that an agreement be entered into between the City and WSDOT concerning the maintenance of the landscaping and other improvements made to certain WSDOT owned property within the I-90 Corridor and defining the responsibilities of each of the parties hereto with respect to said landscaping and other improvements;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances described herein, IT IS MUTUALLY AGREED THAT:

1. IDENTIFICATION OF PROPERTY AFFECTED BY AGREEMENT.

This Agreement pertains to: (a) that approximately 38.77 Acres of land within the area known as the I-90 Corridor from I-5 to Lake Washington that is colored green on Exhibit 1 (which portion is hereinafter called the "Areas to be Maintained"); and (b) the three (3) parcels of land that contain, in the aggregate, approximately 7.22 Acres of land within the I-90 Corridor from I-5 to Lake Washington, that are colored blue, shaded with single hatchures, on Exhibit 1, and are to be conveyed by WSDOT to the City (which parcels are hereinafter collectively called the "Replacement Lands").

Other areas that are depicted in blue on Exhibit 1 that are outside of the Areas to be Maintained and the Replacement Lands but which are subject to the leases that the parties have agreed to execute concurrently with this Agreement, include the following (which may be referred to hereinafter by the definition specified in the second column below):

Blue	Active Recreation Areas (Airspace Lease)	Sturgis Artwork; Approx. 5.18 Acres Atlantic Street Park; Proposed Tennis Courts; Existing & Proposed Basketball Courts; Sportsfield; Tract 37 Screening Fence; Urban Peace Circle; Existing Tennis Courts; Children's Play Area; and East Portal Mt. Baker Ridge Viewpoint (on Lake Wn. Blvd. So.)
------	--	--

Blue with Day Street Double Waterfront Area Hatchures (Airspace Lease)	Open Space, Waterfront Access and Parking Lot	Approx. 3.96 Acres
Yellow Old Colman School Playground (Ground Lease)	Old Colman School Playground for Park & Recreation Use	Approx. 2.30 Acres

## 2. EXHIBITS TO AGREEMENT.

Exhibits attached to and made a part of this Agreement include:

Exhibit 1 - Maps depicting: a) Active Recreation by Airspace Lease;  
b) Replacement Lands;  
c) Ground Lease for Park & Recreation Use;  
d) Areas to be Maintained; and  
e) Waterfront Recreation by Airspace Lease.

Exhibit 2 - Chart titled LEVEL OF CARE For Maintenance Activities.

Exhibit 3 - Ground Lease

Exhibit 4 - Airspace Lease, Active Recreation Areas

Exhibit 5 - Airspace Lease, Day Street Waterfront Area

## 3. WSDOT REDEVELOPMENT OBLIGATIONS.

WSDOT has constructed landscaping on the Areas to be Maintained and on the Replacement Lands consistent with the standards set forth in the "I-90 Seattle Landscape Supplemental Design Report #1 - Part A, Washington State Department of Transportation", dated March 1986; the requirements of the Final Environmental Impact Statement that has been approved for the I-90 Project, both of which documents are incorporated herein by this reference; and as otherwise agreed to by the parties. WSDOT has given the City the opportunity to review and comment on the construction plans for the landscaping at the 90% stage and, wherever possible, has incorporated the City's comments in the final construction plans.

## 4. CITY ACCEPTANCE OF MAINTENANCE RESPONSIBILITIES.

For each landscape contract on the Areas to be Maintained and/or the Replacement Lands, not later than sixty (60) calendar days prior to the completion of Plant Establishment (one to three years after completion of landscape installation, as determined by the language of the landscape contract), WSDOT shall schedule and

conduct with the City a field review of that section of the Area to be Maintained and/or the Replacement Lands covered by that landscape contract. The field review will be for the purpose of mutually determining whether or not the landscaping has been installed and maintained in accordance with the approved contract plans and specifications and that Plant Establishment has been completed. The landscape area that is the subject of the review shall be free of litter and debris and all turf, ground cover plantings, shrub plantings and trees shall be healthy and vigorous. All infrastructure facilities such as irrigation and drainage systems shall be demonstrated to be in proper working order.

Any items found non-compliant with the contract plans and specifications shall be documented at the time of the field review for follow-up corrective action by WSDOT and/or its contractor. WSDOT will notify the City when such corrective work has been completed and a follow-up field review of the completed work will be scheduled and conducted, if requested by the City.

Upon joint determination that the landscaping is consistent with the contract plans and specifications and that Plant Establishment is complete, WSDOT shall certify the same in writing to the City. The City shall acknowledge and accept maintenance responsibilities for the area that is the subject of the review consistent with the provisions of this Agreement by the signing of the WSDOT certification by the Superintendent of Parks and Recreation. Provided, that if said certification is not signed by the Superintendent of Parks and Recreation by the fifteenth (15th) working day after receipt of the certification by the City, acknowledgement and acceptance of said maintenance responsibilities shall be deemed made.

##### 5. CITY RESPONSIBILITIES ON AREAS TO BE MAINTAINED.

For each section of the Areas to be Maintained that the City accepts maintenance responsibilities, as set forth in paragraph 4 herein, the City shall assume responsibility for and shall undertake, on behalf of the WSDOT, maintenance responsibilities as follows:

- A. At a minimum, maintaining such areas to a level equal to or better than the "Medium Level of Care" as defined on Exhibit 2 and consistent with the following paragraphs.
- B. Performing grounds custodial work including but not limited to litter pick-up, garbage collection and disposal, cleaning of hard surfaces, sweeping of trails, keeping drainage structures clean and free of debris and disposing of materials collected in such activities; and performing all trail and sidewalk maintenance, except for structural overlays and work on the main trail from the western portal of the bicycle tunnel through Mount Baker Ridge, easterly through the tunnel and onto the Floating Bridge;

- C. Performing turf maintenance including but not limited to grass mowing, lawn irrigating, trimming, edging, and fertilizing and all other turf cultural practices;
- D. Performing planting bed and tree maintenance including but not limited to weeding, pruning, and fertilizing and irrigating;
- E. Notifying the water and electric utility of City acceptance of payment responsibilities and paying the cost of water used for irrigation purposes and the cost of electrical services;
- F. Performing normal maintenance of the irrigation system such as winter shut down, replacement of heads and risers and all other general maintenance and repairs necessary to keep the system operationally consistent with the standards set forth in Exhibit 2;
- G. Providing and maintaining a secure location for the installation of the irrigation control computer; and after such installation and training of City maintenance staff regarding such control computer, operating and maintaining the computer to control the irrigation systems;
- H. Notifying the telephone utility of City acceptance of payment responsibilities and being responsible for the ongoing cost of use and maintenance of the phone lines necessary to operate the irrigation control computer system, which computer system shall remain the property of WSDOT;
- I. Securing WSDOT written approval prior to making significant changes in the irrigation control computer system's hardware or software;
- J. Removing graffiti from the artwork located within the Urban Peace Circle and the Sturgis Artwork Area as illustrated in blue on page 1 of Exhibit 1;
- K. Removing graffiti on all horizontal surfaces including benches, trails, roadways, etc.; within the area up to ten feet (10') above the ground level on the vertical, public access side of retaining walls, raised planters, ventilation stacks, bridge columns, concrete slope protection structures; and on the artwork stones along the bikeway. Each year after the City has expended 100 workhours on graffiti removal as described in this subsection, the City shall provide the WSDOT Northwest Region Maintenance Engineer or such official's functional successor, with documentation showing the labor hours

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expended and expenses incurred by the City on any such graffiti removal. Upon review and approval of said documentation by WSDOT, WSDOT and the City will equally share the costs of said graffiti removal in excess of said 100 workhours as part of the quarterly payments for maintenance as set forth in paragraph 8 herein;

- L. Because of the special free draining nature of the soils on the I-90 lid structure, being responsible for ensuring that the landscaping gets sufficient water to keep the landscaping alive; and if the necessary irrigation is not provided, being responsible for the replacement of landscaping that dies or is severely damaged due to lack of water;
- M. Informing City employees, agents, contractors, and permittees who, as such, have any City authorization to affect, or official function or responsibility with respect to, any portion of the special "soil system" on the top of the I-90 Project Lid regarding such system (which consists of a waterproof membrane, drainage systems, filter fabric, drain gravel, irrigation system and topsoil), and prohibiting the damaging of such system by any such person or entity;
- N. Prohibiting any excavation, drilling, or driving of any stake or other material into the special "soil system" by any City employee, agent, contractor, or permittee other than is necessary for the repair of the irrigation system or replacement planting of existing trees and other plants, unless the prior written approval of the WSDOT Northwest Region Maintenance Engineer has been secured with respect to such work;
- O. Being responsible for all trail maintenance other than that set forth in paragraph 6 herein, including but not limited to routine trail nonstructural maintenance, including patches, repairs and seal coats or overlays less than 0.72 inch in thickness;

**6. WSDOT MAINTENANCE RESPONSIBILITIES.**

For each section of the Areas to be Maintained that the City accepts maintenance responsibilities as set forth in paragraph 4 herein, WSDOT shall be responsible for the following maintenance work :

- A. Repaving all trails or other structural repairs and overlays greater than 0.72 inch in thickness, when required, the timing of which shall be jointly determined by WSDOT and the City;
- B. Maintaining and repairing the structural components of retaining walls, the bicycle tunnel, the lid structure,

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the tunnel structure, overcrossings constructed as part of the I-90 Project, and the main trail from the west tunnel entrance eastwards;

- C. Maintaining all storm drainage facilities, other than cleaning, as necessary to protect the structural integrity of bridges, walls, and other structural features of the I-90 Project;
- D. Replacing the irrigation system, including the computer control system, when required, the timing of which shall be jointly determined by WSDOT and the City based on the annual maintenance cost, the condition of the system and necessity;
- E. Providing the complete computer control system that is necessary to operate the irrigation systems including hardware, phone lines, software, manuals and training in operation of the system;
- F. Performing graffiti removal from the WSDOT control and ventilation buildings, the bicycle tunnel, the eastern tunnel portal and plazas, the superstructure of the floating bridges, the western portal for the bicycle tunnel and all portions of vertical surfaces that are ten feet (10') or more above the ground level;
- G. Providing to the City a copy of all available pesticide application records prior to the City taking on the maintenance responsibilities as provided herein;
- H. Providing to the City a copy of WSDOT contractor irrigation controller programming records, if any; and
- I. If arranged by the City ahead of time, and with the concurrence of WSDOT, programming or arranging to have programmed by the WSDOT contractor the irrigation computer system for the WSDOT contractor's use and, if used, providing the City with said program at the time the City accepts maintenance responsibilities as provided herein.

**7. OTHER APPLICABLE STANDARDS FOR MAINTENANCE WORK.**

A. Flammable/Hazardous Substances. Except as otherwise provided herein, the City shall not store, bring or allow to be brought onto the Areas to be Maintained any toxic or hazardous substances as defined under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or Federal Superfund) (42 U.S.C. § 9601 et seq.), or the Model Toxics Control Act [MTCA; RCW Ch. 70.10SD], or flammable substances including but not limited to explosives, petroleum products, paint, solvents, and resins, without the express written permission of WSDOT.

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GM1319



WSDOT hereby grants permission for the City to bring onto the Areas to be Maintained and to reasonably use toxic, hazardous or flammable substances deemed by the City to be necessary or appropriate to carry out its maintenance responsibilities under this Agreement. Pesticides may be used for landscape maintenance in accordance with manufacturer's directions at the City's risk.

The disposal of any and all toxic, hazardous and flammable substances stored or brought onto the Areas to be Maintained by the City, or allowed by the City to be brought onto said property shall be done in a legal manner by the City.

The City hereby agrees to indemnify WSDOT and hold WSDOT harmless for any costs or liabilities associated with the removal or remediation of any hazardous substances (including petroleum and gasoline product) that have been released or otherwise have come to be located on the site by the activities of the City or any of its employees, agents, contractors, or subcontractors. "Costs" shall include, but not be limited to, all response costs, disposal fees, investigation costs, monitoring cost, civil or criminal penalties, attorney fees, and other litigation costs incurred in complying with state or federal environmental laws, which shall include, but not be limited to, the aforementioned acts; the Clean Water Act, 33 USC Section 1251; the Clean Air Act, 42 USC Section 7401; and the Resource Conservation and Recovery Act, 42 USC Section 6901.

The City further agrees to retain any and all liabilities arising from the off-site disposal, handling, treatment, storage, or transportation of any toxic, hazardous or flammable substances, including petroleum products, removed from the Premises and that liabilities under this section (Flammable/Hazardous Substances) shall survive the expiration of this Agreement.

**B. Utility Franchises.**

(1) WSDOT will make best efforts to require utility franchise and permit holders to give the City 48 hours notice prior to entering upon the Areas to be Maintained for utility installation and maintenance purposes.

(2) The City shall not disturb permanent markers installed by a franchise/permit holder.

(3) Prior to tilling of the soil, or any other operation of the City in which earth, rock or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater, the City must provide notice to all owners of underground facilities by calling 1-800-424-5555 (or such other telephone number as designated). Furthermore, the City must comply with all

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applicable provisions of Ch. 19.122 RCW relating to underground facilities.

**8. WSDOT TO COMPENSATE CITY FOR PERFORMANCE OF MAINTENANCE WORK IN AREAS TO BE MAINTAINED.**

WSDOT shall compensate the City costs for performing maintenance work in the Areas to be Maintained, as depicted in green on Exhibit 1, in the base amount of \$6,218.77 (1996 Dollars) per acre per year less the annual offset: (a) in the amount due WSDOT from the City for special events under the Active Recreation Areas Airspace Lease and the Day Street Waterfront Area Airspace Lease, which documents are executed concurrently with this Agreement and any amendments thereto, and which are attached hereto as Exhibits 4 and 5, respectively; and (b) in the amount due WSDOT from the City as consideration for, and for special events under the Ground Lease executed concurrently with this Agreement and any amendments thereto, which is attached hereto as Exhibit 3. This base amount shall be adjusted annually in July of each year by the percentage change that occurred during the preceding calendar year in the U.S. Consumer Price Index for All Urban Consumers ("U.S. CPI"), using the data as published by the Washington State Department of Revenue, Office of the Economic Forecast Council, or its successor; Provided, that in the event such index is discontinued, the parties hereto shall select and use for such adjustment purpose, another, similar index that reflects consumer price changes.

Quarterly payments of such compensation shall be made by WSDOT to the City within thirty (30) days of receipt and acceptance by WSDOT of: (a) a certification from the City that the maintenance services have been performed as required in this Agreement and in accordance with Exhibit 2 (Level of Care for Maintenance Activities) of this Agreement; (b) an invoice from the City for the amount to be paid based on per acre amount less credits as provided herein plus any payments due for graffiti removal as provided in paragraph 5.K. herein; and (c) a completed I-90 Maintenance Work Performed by the City of Seattle form, which shall be specified by the WSDOT Northwest Region Maintenance Engineer. The initial and final payment for less than a full quarter shall be prorated.

Upon receipt of these items WSDOT will field review the Areas to be Maintained. If such areas meet the level of care criteria as specified in Exhibit 2, payment will be made within 30 days. If, in the opinion of WSDOT, said areas have not been maintained to said level of care criteria, the City and WSDOT shall meet to discuss the areas of concern. If differences can not be resolved, WSDOT will withhold a portion of the payment as it deems appropriate.

**9. MINOR IMPROVEMENTS TO THE AREAS TO BE MAINTAINED.**

The parties acknowledge that WSDOT has given permission to the City to install and maintain certain City-owned improvements on the

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Areas to be Maintained. These minor improvements include picnic tables, benches, bicycle stands, garbage cans and area illumination. Any additional minor improvements by the City shall require the prior written approval of WSDOT.

10. CITY ALLOWANCE OF EVENTS ON AREAS TO BE MAINTAINED.

No use other than passive recreation shall be permitted on the Areas to be Maintained without the prior written approval of WSDOT. Notwithstanding the foregoing, the City may issue event or use permits with the written concurrence of WSDOT for the use of all or a portion of the Areas to be Maintained, provided the minimum requirements listed below and any other requirements deemed reasonably necessary by WSDOT are met. Subject to the provisions herein, the City agrees to manage the use of the Areas to be Maintained for special events. Said management services is hereby deemed adequate consideration for the rental of the portion of the Area to be Maintained for the special event.

- A. The event or use does not affect or impact the traveled lanes or the operation of I-90 or its ramps, and is consistent with the park like atmosphere intended for the area;
- B. The event or use does not exceed the structural loading limits of the design of the I-90 lid for live loads;
- C. There is no charge by the City or the permittee for the use of the land;
- D. The City, in the case of a City produced event, warrants that it is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the City is not self-insured, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- E. The City-authorized group, in the case of other than City produced events, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- F. The City, in the case of a City produced event, agrees to indemnify, save and hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the special event activity;
- G. The City in other than City produced events, shall require the permittee to indemnify, save and hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out the activities authorized by the permit;
- H. The City assumes responsibility for all clean up and repair of any damage resulting from the use or event.

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11. INSURANCE.

City warrants that it is self-insured, and agrees to provide acceptable evidence in the form of a certification of its self-insured status to WSDOT or, if the City is not self-insured, to secure liability insurance in the form and amount reasonably determined necessary by WSDOT; Provided, that WSDOT may reasonably adjust said coverage requirements from time to time based on risk factors and the adequacy of the stated policy limits.

12. HOLD HARMLESS/INDEMNIFICATION.

- A. City's Indemnification: The City shall protect, save, and hold harmless and defend the WSDOT, its officers, employees or agents and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the City or any of its officers, employees, agents, contractors, or the contractor's subcontractors, on the Areas to be Maintained under this Agreement.
- B. WSDOT's Indemnification: WSDOT shall protect, save and hold harmless and defend the City and its officers, employees and agents from all claims, actions, costs, damages or expenses of any nature whatsoever (including but not limited to reasonable attorney's fees and costs) arising out of any act or omission of WSDOT or any of its employees, officers, agents, contractors (other than the City) or contractor's subcontractors on the Areas to be Maintained under this Agreement; Provided, that nothing herein shall be deemed to obligate WSDOT to indemnify, hold harmless or defend the City for the acts or omissions of the Federal Highway Administration or utility franchise and permit holders.
- C. Concurrent Negligence or Actions Covered by RCW 4.24.115: If the claims or damages are caused by or result from the concurrent negligence of (i) the WSDOT, or any of its officers, employees, agents, contractors (other than the City) or the contractor's subcontractors and (ii) the City or any of its officers, employees, agents, contractors or the contractor's subcontractor, or involves any action covered by RCW 4.24.115, a party's indemnification obligation hereunder shall be valid and enforceable only to the extent of the negligence of such party or any of its officers, employees, agents, contractors or contractor's subcontractors, as appropriate.

13. NONDISCRIMINATION.

The City, as a part of the consideration hereof, does hereby

covenant and agree that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be unlawfully excluded from participation in, be unlawfully denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the Areas to be Maintained under this Agreement, that in connection with the City's performance of maintenance services hereunder, no such unlawful discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, that such unlawful discrimination shall not be practiced against the public in their access to and use of the Areas to be Maintained. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the WSDOT to terminate this Agreement in accordance with the procedures set forth herein.

#### 14. TERMINATION FOR CONVENIENCE.

This agreement may be terminated for reasons other than non-performance by either party on six (6) months prior written notice to the non-terminating party.

#### 15. DEFAULT & BREACH.

Upon the default and material breach of this Agreement by either party hereto, the other party may give to the party allegedly in breach notice specifying the nature of such breach, the period of time within which such breach must be cured, and at the option of the party giving such notice, such party's intention to declare a default and to terminate this Agreement in the event such breach is not cured within the specified cure period. Neither party shall be in default unless it fails to cure the breach within thirty (30) days from the giving of such notice of default, except that if the nature of the obligation is such that more than thirty (30) days is required for performance or cure, then the party allegedly in breach shall not be in default if such party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. After the expiration of thirty (30) days from the giving of such notice of default or the time period otherwise provided herein, if one or more of the breaches remains unremedied, this Agreement shall terminate without further notice. The non-breaching party may in writing, at its option, extend the above cure period if, in the judgment of the non-breaching party, an extension is justified.

At any time after the occurrence of a default or defaults under this Agreement and if, in WSDOT's determination, an emergency exists, or the default cure period provided for herein has expired, and while any such default remains unremedied, WSDOT shall have the option of giving verbal notice if an emergency exists, or notice in writing for non-emergent defaults, of its intention to cure such default by itself or through use of agents or contractors. The City agrees to reimburse WSDOT promptly for resultant direct costs WSDOT incurs in curing such default or, in the alternative, that

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WSDOT may, at its sole discretion, withhold compensation otherwise due the City under this Agreement in an amount equal to the costs incurred in curing such default.

**16. CONVEYANCE OF "STURGUS PARK" REPLACEMENT LANDS.**

WSDOT shall convey to the City and the City shall accept a total of 157,874 square feet of land between Wall 7 and Sturgus Avenue South (the "Sturgus Replacement Lands" as shown in Exhibit 1) as compensation for the taking of City park land known as Sturgus Park for the construction of I-90. This land transfer shall be by quit claim deed executed concurrently with this Agreement, and upon such conveyance, the land will become the property of the City subject to certain restrictions shown in the deed.

**17. CONVEYANCE OF "JUDKINS PLAYGROUND" REPLACEMENT LANDS (Tracts 16 and 37).**

WSDOT shall convey to the City and the City shall accept a total of 3.6 acres of land as compensation for the taking of land in the Judkins Park vicinity for the construction of I-90. The areas to be deeded are:

- A. A parcel containing approximately 2.73 acres lying immediately east of Martin Luther King Jr. Way South and north of I-90 ("Tract 37" as shown on Exhibit 1); and
- B. A parcel containing approximately 0.87 acres lying between South Judkins Street and the I-90 right of way in the vicinity of 22nd Avenue South ("Tract 16" as shown on Exhibit 1)

These tracts shall be transferred by quit claim deed executed concurrently with or in advance of this Agreement, and upon such conveyance, the land will become the property of the City subject to certain restrictions shown in the deed.

**18. CITY RESPONSIBILITY FOR REPLACEMENT LANDS MAINTENANCE.**

The City shall be responsible for maintaining the Replacement Lands listed in paragraphs 16 and 17 hereof immediately upon the signing of the deeds by WSDOT or upon completion of the Plant Establishment period applicable thereto under the WSDOT's separate landscaping contract, whichever is later, unless the parties agree to an earlier assumption of the maintenance responsibilities by the City; Provided, that if the property transfer is completed prior to the completion of the Plant Establishment period applicable thereto, WSDOT or its contractors, as necessary, shall enter onto such portion(s) of Replacement Lands and construct thereon the required landscaping and maintain the landscaping until the expiration of the Plant Establishment Period. Nothing herein establishes any minimum level of care to be provided to the Replacement Lands after their conveyance to the City.

**19. ASSIGNMENT.**

Neither this Agreement nor any rights created by it may be assigned, provided that nothing herein shall prohibit the City from subcontracting with a third party to perform the maintenance work agreed to herein with the prior written approval of WSDOT, which shall not be unreasonably withheld. Any such subcontract shall not relieve the City of its obligation to maintain the Areas to be Maintained as agreed herein.

**20. RECORD REQUIREMENTS.**

The City shall keep accurate and current at all times records and documents that document work performed by the City and support claims for compensation made under this Agreement. Said records and documents shall be available for review by WSDOT during normal City business hours and shall be retained by the City for a minimum of three (3) years after the payment of compensation. WSDOT reserves the right to inspect, audit and copy any or all said records and documents that relate to this Agreement.

**21. AMENDMENTS.**

No addition to, deletion from, or other modification of any of the provisions hereof shall be valid unless made in writing and signed by an authorized representative of each of the parties hereto.

**22. INTERPRETATION.**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

**23. CUMULATIVE REMEDIES.**

All remedies available at law or in equity to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**24. NO WAIVER.**

No action other than a written notice by one party to the other specifically stating that such notice has the effect of a waiver, shall constitute a waiver of any particular breach or default of such other party. No such notice shall waive a party's failure to fully comply with any other term, condition, or provision of this Agreement, irrespective of any knowledge any officer, employee, or agent of the other party may have of any breach or default of, or noncompliance with, such other term, condition, or provision. No

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waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement. The performance or acceptance of maintenance services for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

**25. SUPERSESION OF PRIOR AGREEMENTS.**

This Agreement represents the entire agreement of the parties with regard to the subject matter hereof and supersedes any prior agreement not incorporated herein. In the event of any inconsistency between this Agreement and any prior agreement, whether written or oral, the terms of this Agreement shall prevail.

**26. NOTICES.**

Wherever in this Agreement a written notice is to be given or made, it shall be sent by certified mail addressed to the party at the address listed below, or personally served on the party at the address listed below, unless such party has designated, by written notice previously delivered to the other party, a different address:

WSDOT: ATTN: Northwest Region Maintenance Engineer  
DEPARTMENT OF TRANSPORTATION  
P. O. Box 330310  
15700 Dayton Avenue North  
Seattle, WA 98133-9710

CITY: Superintendent of Parks & Recreation  
THE CITY OF SEATTLE  
Administration Building  
100 Dexter Avenue North  
Seattle, WA 98109

Said notices shall be effective upon receipt of notice in the manner described above.

**27. NEGOTIATED AGREEMENT.**

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

**28. EFFECTIVE DATE OF AGREEMENT.**

This Agreement is effective upon its full execution by the parties hereto.



IN WITNESS WHEREOF, the parties hereto have had their respective representatives sign their names in the spaces below:

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: Joachim Pestinger  
JOACHIM PESTINGER DIRECTOR, REAL ESTATE SERVICES  
(Print or type name and title of signer)

Dated: 4/18/97

THE CITY OF SEATTLE

By: Kath R. R.  
Superintendent Parks & Recreation  
(Print or type name and title of signer)

Dated: April 4, 1997

APPROVED AS TO FORM ONLY:

February 13, 1997  
By: Bruce Brown  
Assistant Attorney General

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STATE OF WASHINGTON )  
 ) ss. (WSDOT ACKNOWLEDGMENT)  
COUNTY OF THURSTON )

On this 18th day of April, 1997, before me personally appeared Thomas Pestinger, to me known to be the duly appointed Director, Real Estate Services, Washington State Department of Transportation, who stated, on oath, that he executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein set forth, and that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the 18th day of April, 1997.

Tom A. Dale  
Signature

Tom A. Dale  
(Print or type name of notary)

Notary Public in and for the State Washington, residing at \_\_\_\_\_

Elm 2  
My commission expires 5/12/00



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STATE OF WASHINGTON )

THE COUNTY OF KING )

) ss.

(CITY ACKNOWLEDGMENT)

On this 25<sup>th</sup> day of APRIL, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CYRIL E.B. ADAMS ~~to~~ for KENNETH BOUND S to me known to be the ACTING ~~Supervisor of Parks & Recreation~~ of The City of Seattle, who on oath stated that HE executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes herein mentioned, and that HE was authorized to execute the said instrument for and on behalf of The City of Seattle.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

John C. Richter  
Signature

(Print or type name of notary)

Notary Public in and for the State Washington, residing at \_\_\_\_\_

My commission expires 8-8-98

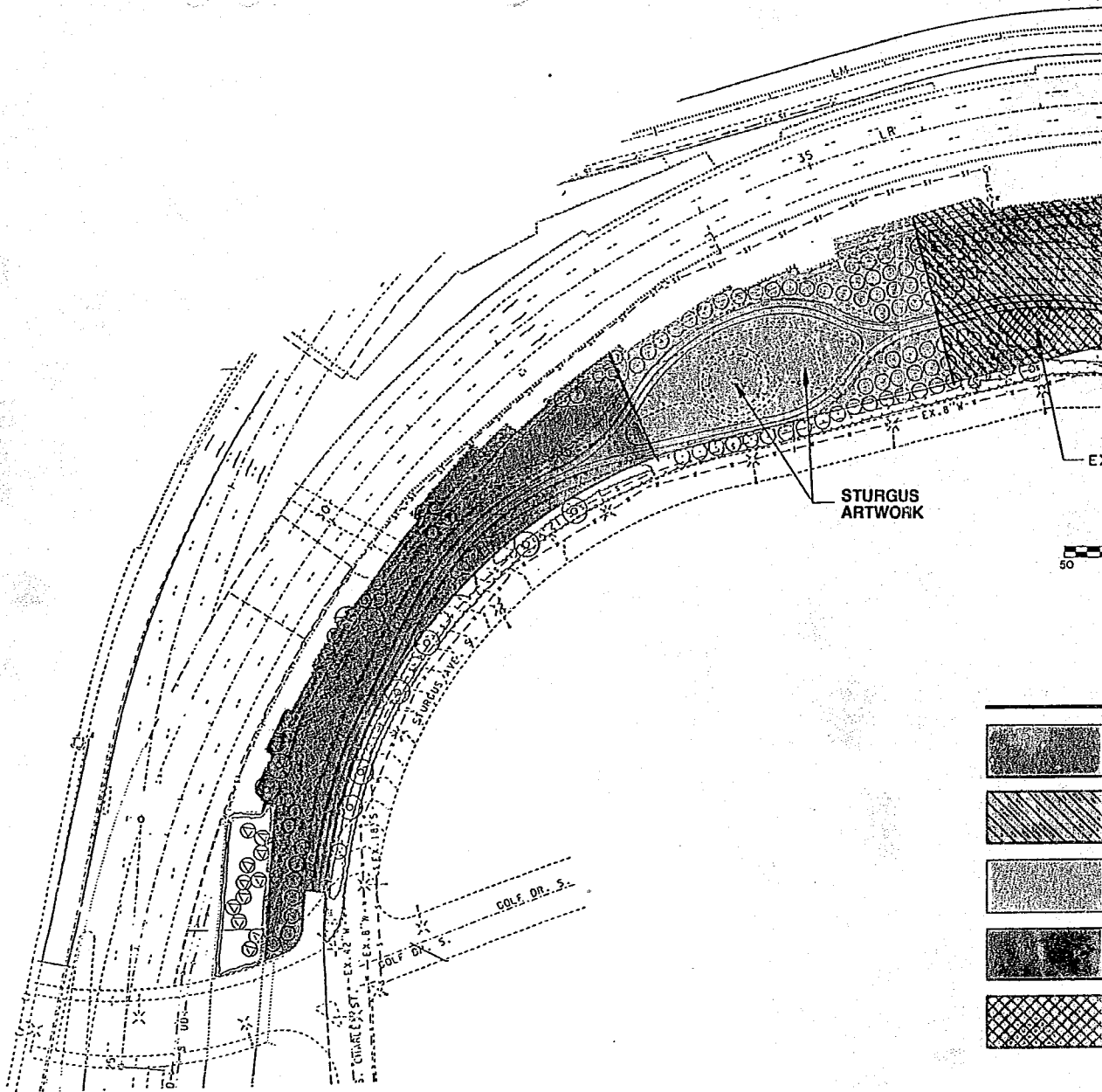


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# LEVEL OF CARE

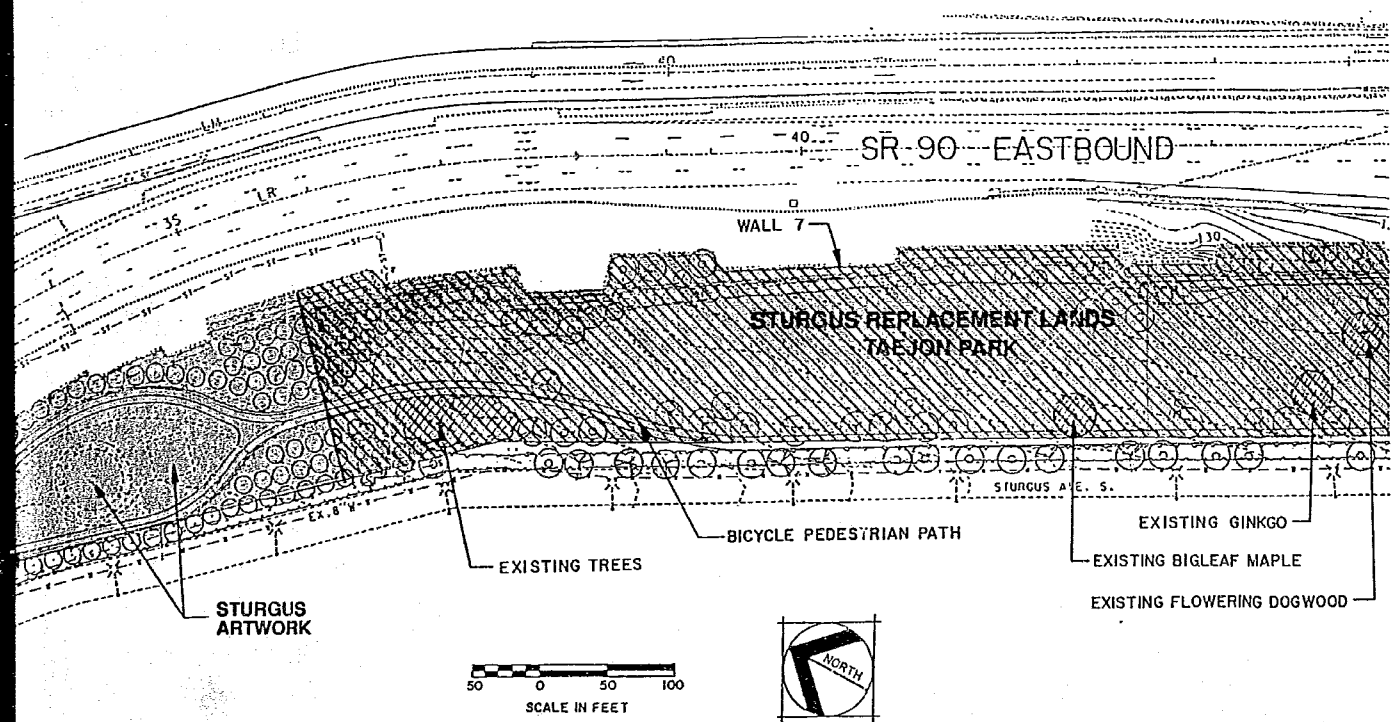
		NATIVE	LOW	MEDIUM	HIGH
GRASS HEIGHT:	Turf			2-3" 15 Mow/Year	1.5-2" 30 Mow/Year
	Rough	Unmown Meadow	6-9" 4 Mow/Year	3-5" 8 Mow/Year	
EDGE DEFINITION:		None	None	Chemically	Chemically & Mechanically Clean, Sharp, Defined Boundary
PLANT CARE:	Pruning	None	None	Perimeter	Shearing & Shaping
	Fertilization	None	25% per year	50% per year	100% per year
	Irrigation	None	None	Cont. Operation 2nd Priority	Cont. Operation 1st Priority
PLANT REPLACEMENT:		None	None	As Time Allows	Immediate
DANGER TREES:		Immediate Removal of Danger Trees			
WEED CONTROL:		Noxious Only	Noxious & Invasive	Seasonal	Weed-Free Appearance
NOXIOUS WEEDS:		NO NOXIOUS WEEEDS			
MULCH:		None	None	None	15% Per Year
DISEASE/PEST CONTROL:		None	Plant Survival	Plant Survival	Appearance
VANDALISM/LOSS (Except Plants):		None	Limited	Repair/Replacement/Cleaning	
LITTER CONTROL:		Annual	Annual	4 Times Per Year	20 Times Per Year
PAVED AREAS (Including Trails and Active Recreation Surfaces):		Safe, Clean, Smooth, Litter Free, Snow & Ice Removed, Patch, Seal As Required			

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SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1  
SHEET 1 OF 10

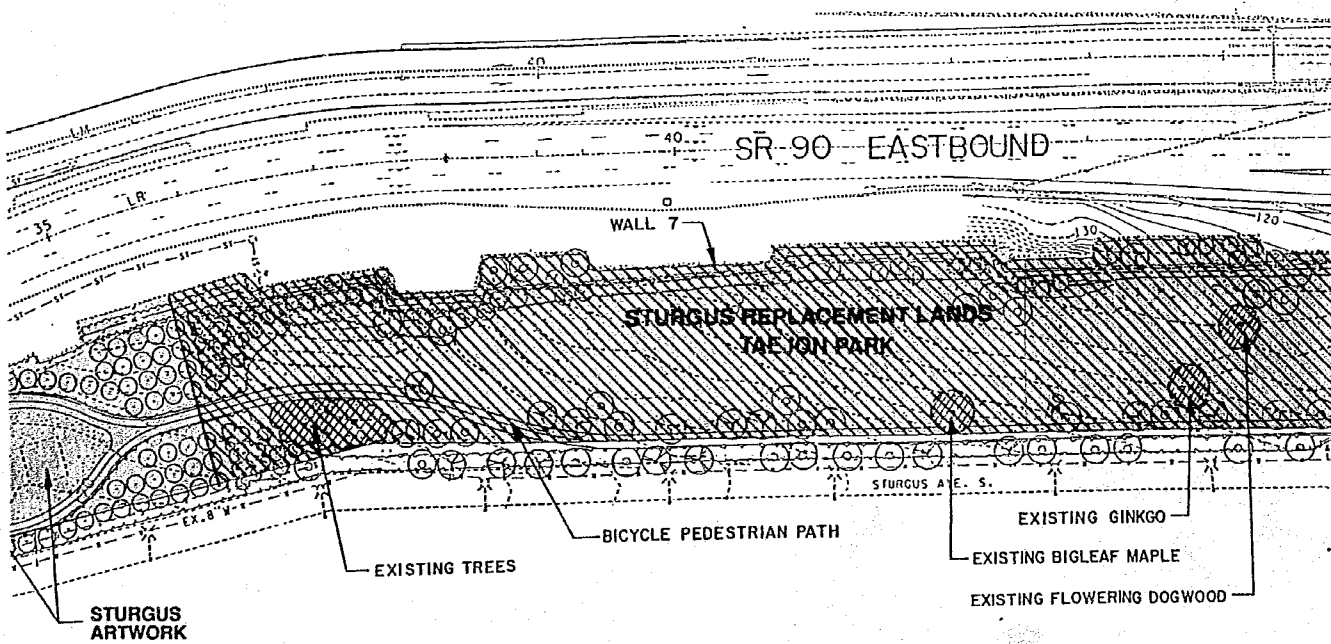
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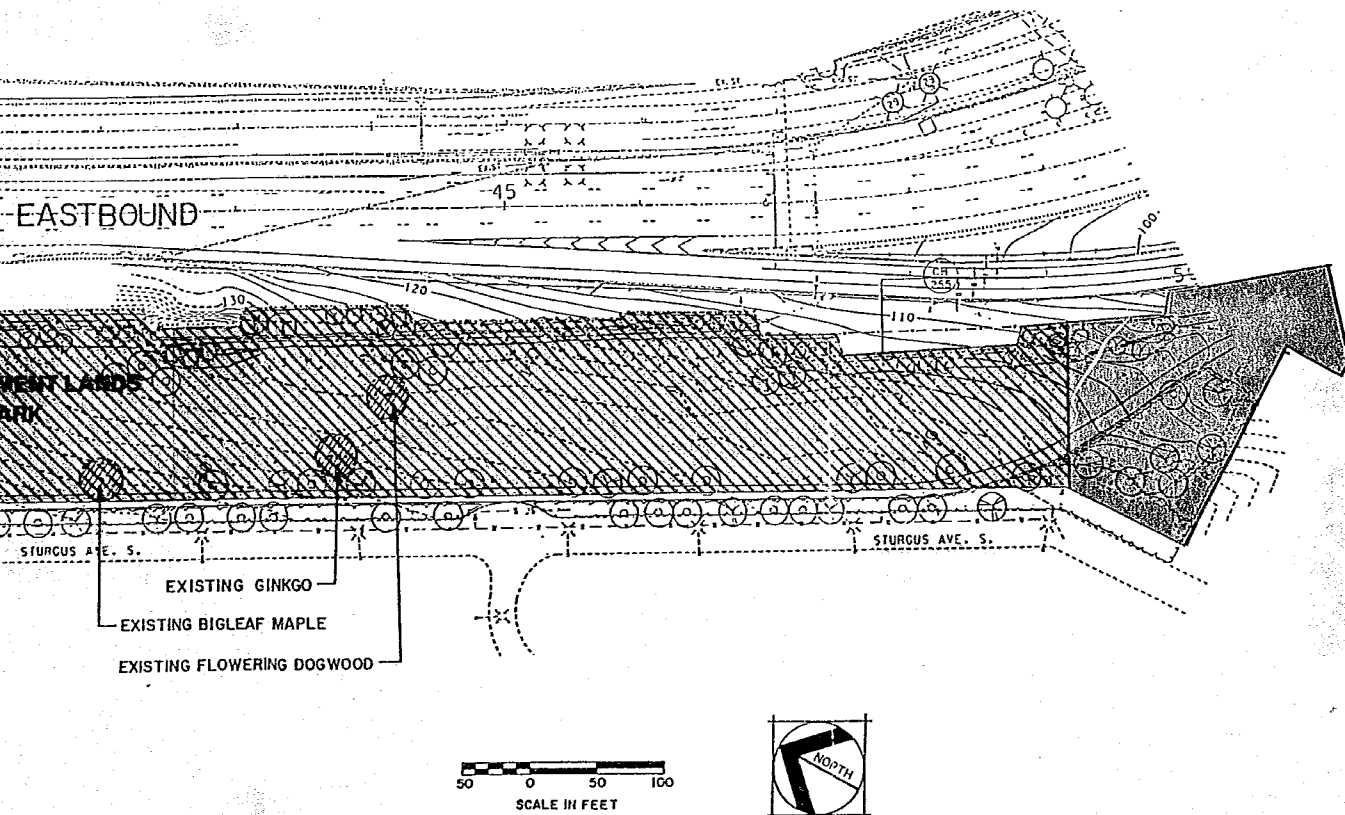
**LEGEND:**

-  **ACTIVE RECREATION BY AIR SPACE LEASE**
-  **REPLACEMENT LANDS**
-  **GROUND LEASE FOR PARK AND RECREATION USE**
-  **AREAS TO BE MAINTAINED**
-  **WATER FRONT RECREATION BY AIR SPACE LEASE**

Date: 13 SEP 1997



Date: 13 FEB



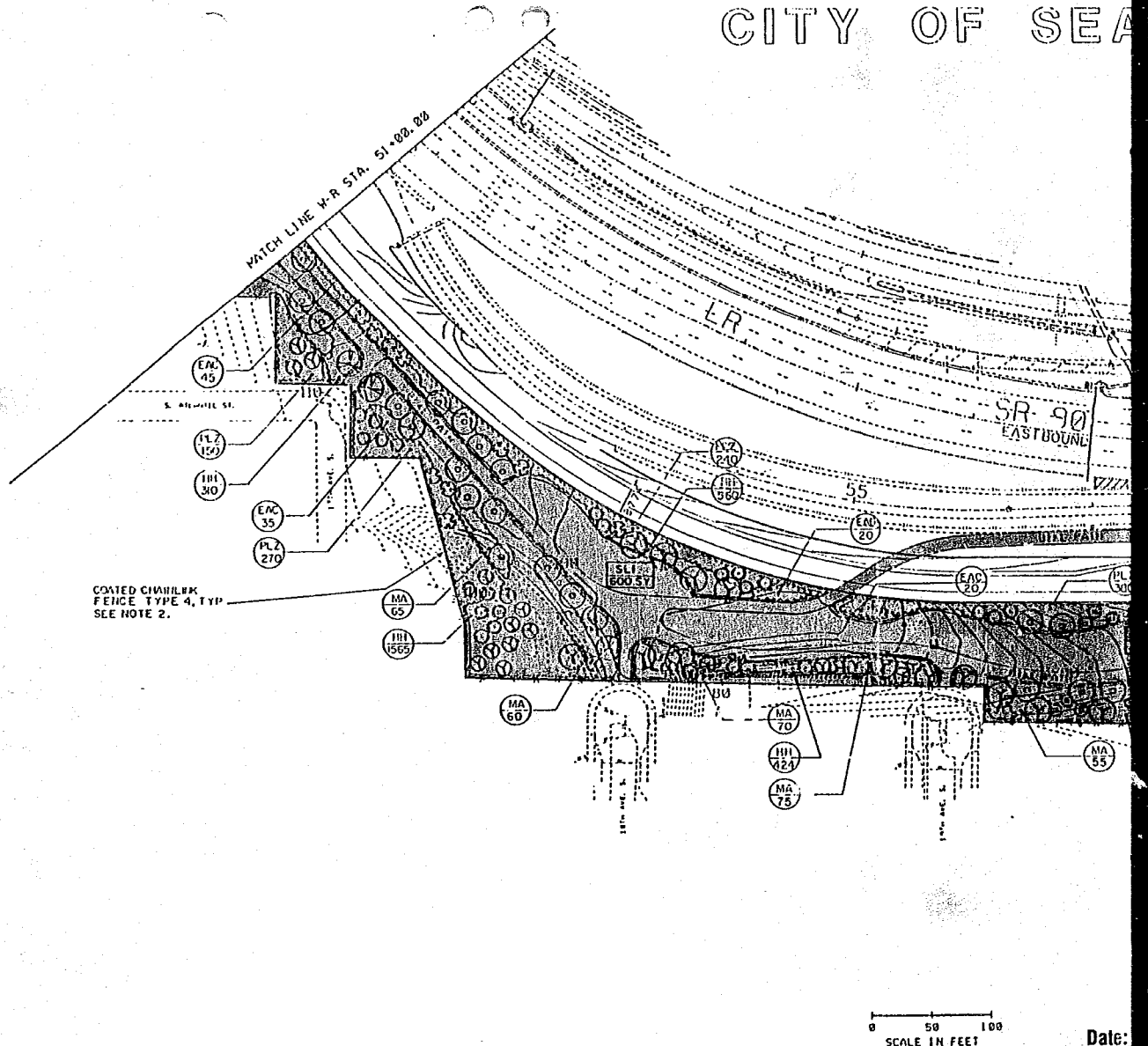
Date: 13 FEB 1997

SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1  
SHEET 2 OF 10

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# CITY OF SEA

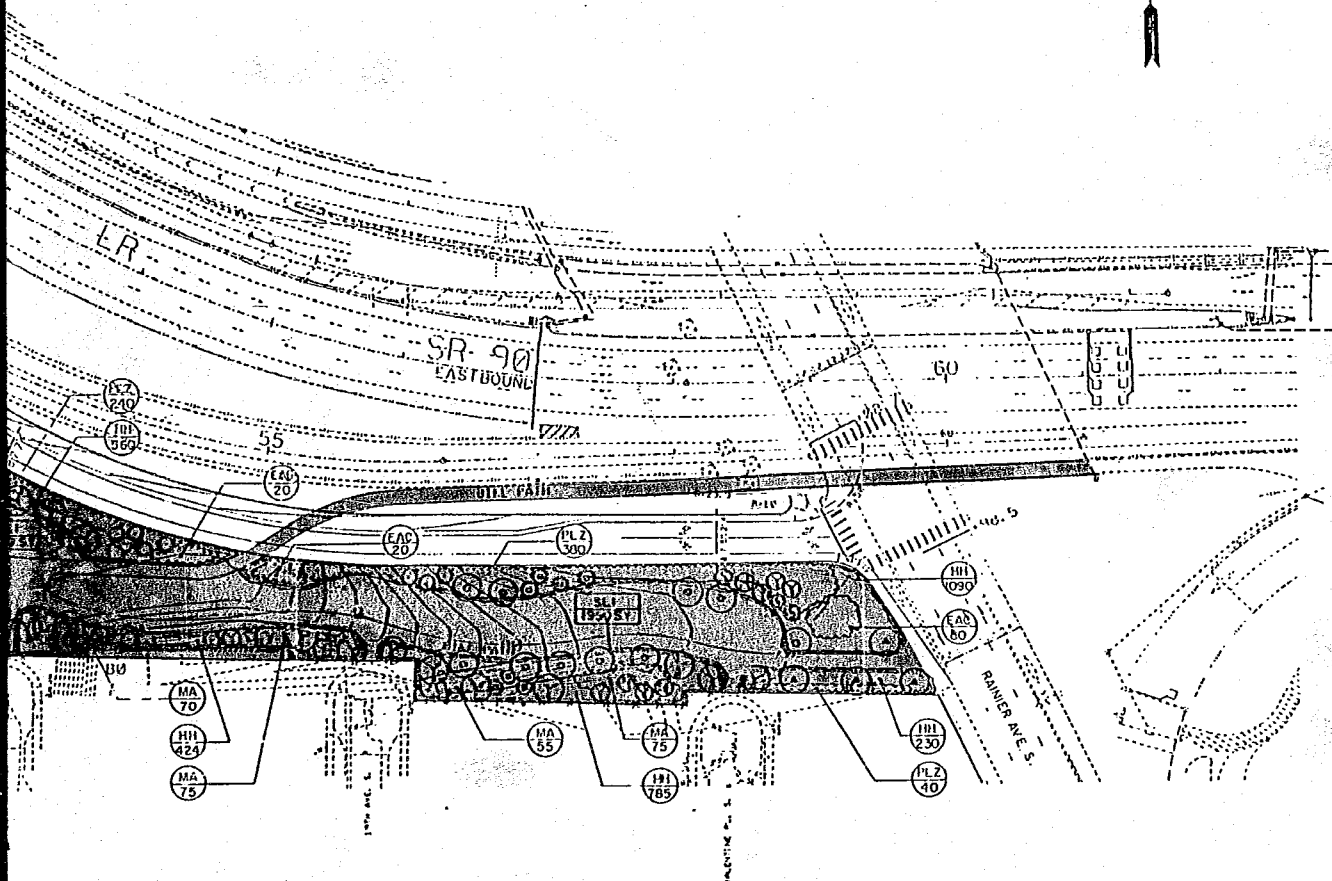


Date:

DESIGNED BY R. LAUGHLIN				REGION 18	STATE WASH	FED. AID PROJ. NO. ACI-191-090-1(402)	PROGRAM DEVELOPMENT DIVISION
ED. BY J. BENNETT							
ENGR. S. ANDERSON							
ADVIS. R. ANDERSON							
DATE	DATE	REVISION	BY				

1.5TH. 10.10. 11.M.

# CITY OF SEATTLE



0 50 100  
SCALE IN FEET

Date: 13 FEB 1997

NOTES:

1. ALL PLANTING & SEEDING AREAS SHALL RECEIVE SOIL AMENDMENTS. SEE SPECIAL PROVISIONS.
2. COATED CHAIN LINK FENCE ENDS SHALL BE 5 FEET FROM PATH EDGES, 5 FEET FROM SIDEWALK EDGE (S. ATLANTIC ST. AND 17TH AVE. S.) AND AT STREET R.O.W. LINE ON STURGEON AVE. S.

ED. AID PROJ. NO.

ACI-MI-090-R(402)

PROGRAM DEVELOPMENT  
DIVISION

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

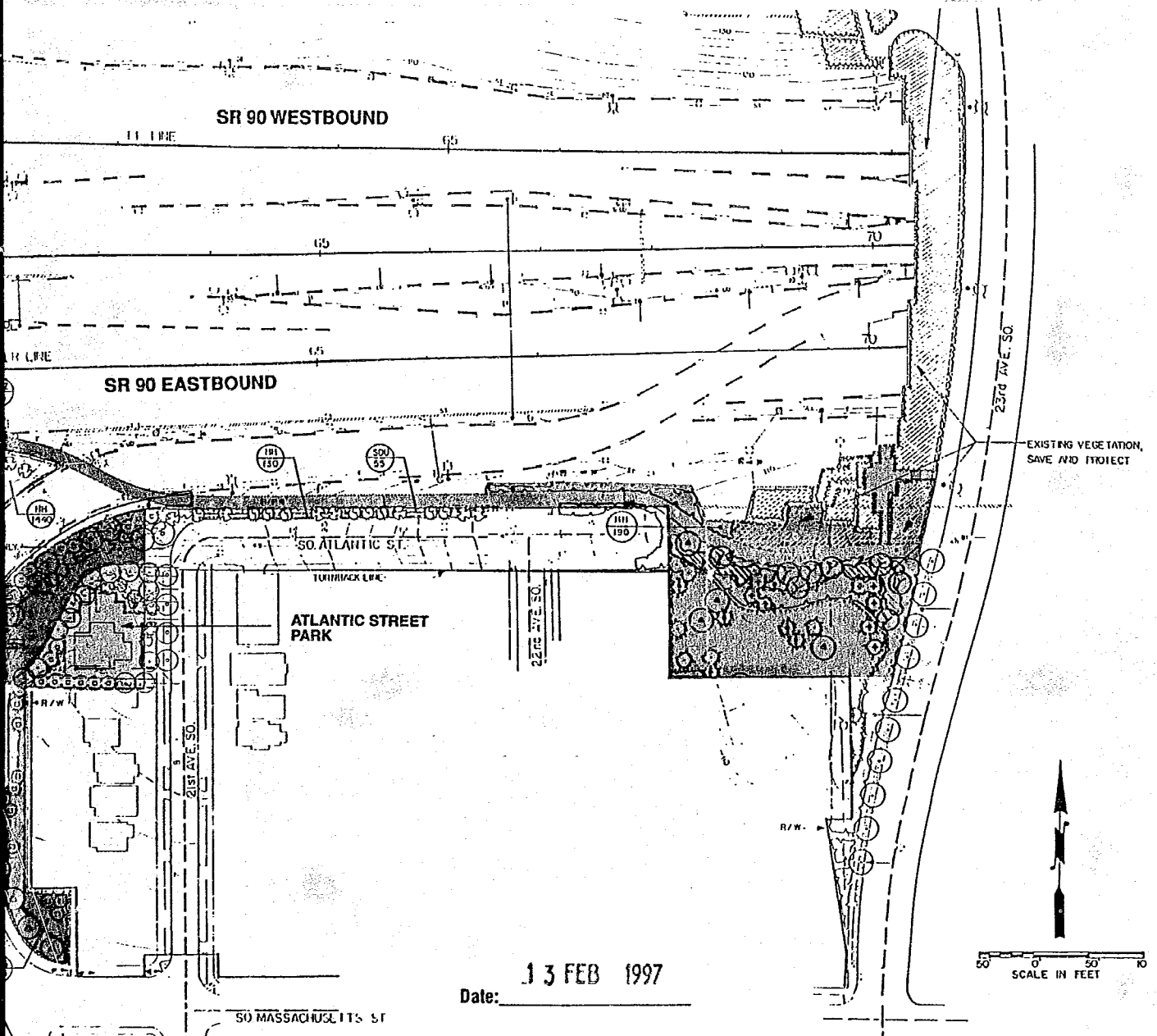
SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1

SHEET 3 OF 10

1/15/97

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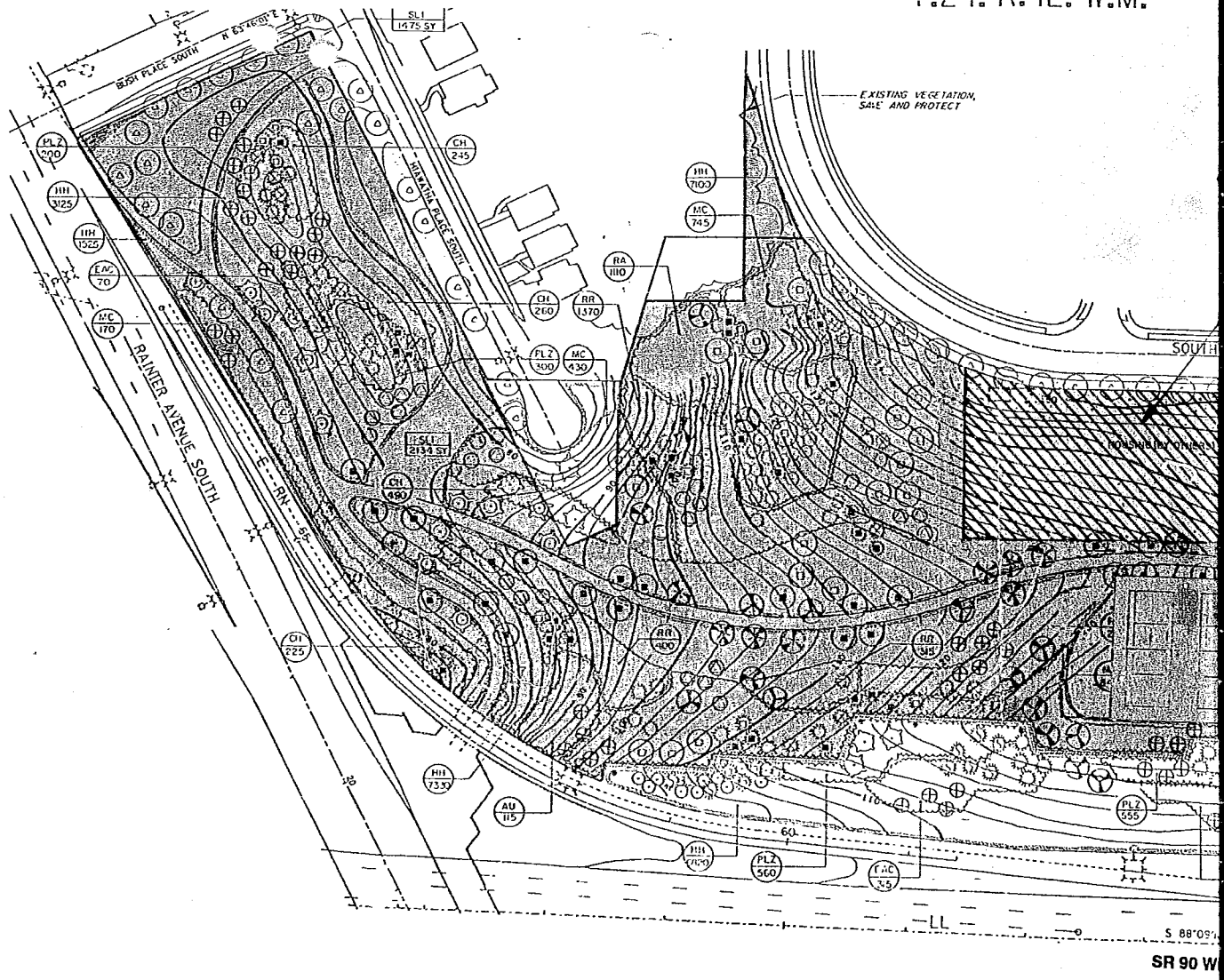




<p>11-211</p> <p>11-212</p> <p>TOTAL</p> <p>11-213</p>	<p>HIGHWAY DIVISION</p> <p>APPROVED</p>	<p>Washington State Department of Transportation</p>	<p>SR 90 SEATTLE MAINTENANCE AGREEMENT EXHIBIT # 1</p> <p>SHEET 4 OF 10</p>
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100 to 150 ft. 11.11.11



				MILEAGE		STATE	FED. AID PROJ. NO.	PROGRAM DEVELOPMENT DIVISION		
W.N.	R. LAUGHLIN			10	WASH					
C.E.O.	D. PETERSON									
J. ENGR.	G. HOVE									
T. ADM.	R. ANDERSON					ACI-090-11387)				
		DATE	DATE	REVISION	BY					
					4222					

100 10 150 150 150 150

EXISTING VEGETATION,  
SAVE AND PROTECT

NOTE: All planting and seeding areas shall  
receive soil amendment

JUDKINS REPLACEMENT LAND TRACK 16

SELECTIVE PRUNING  
THIS AREA

SOUTH JUDKINS STREET

TENNIS COURTS  
(PROPOSED)

(EXISTING)  
(PROPOSED)  
BASKET BALL  
COURTS

25th AVENUE SOUTH

SR 90 WESTBOUND

0 50 100  
SCALE IN FEET

Date: 13 FEB 1992



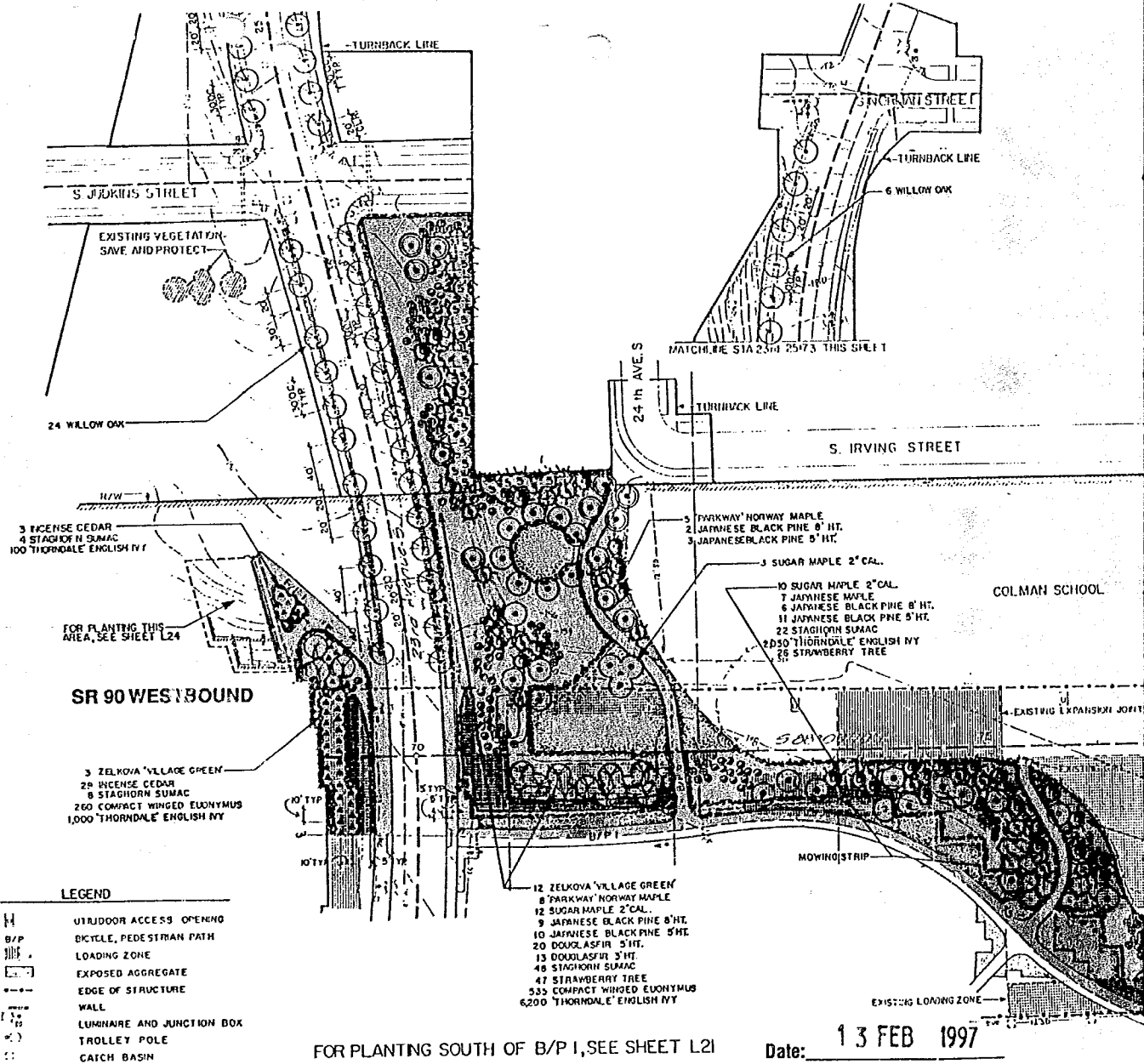
DATE 13  
FEB 1992  
JONAS A. LITTON  
CERTIFICATE NO. 92

EXISTING VEGETATION,  
SAVE AND PROTECT

FED. AID PROJ. NO. ACI-090-113871	PROGRAM DEVELOPMENT DIVISION	Washington State Department of Transportation	SR 90 SEATTLE MAINTENANCE AGREEMENT EXHIBIT # 1
			SHEET 5 OF 10

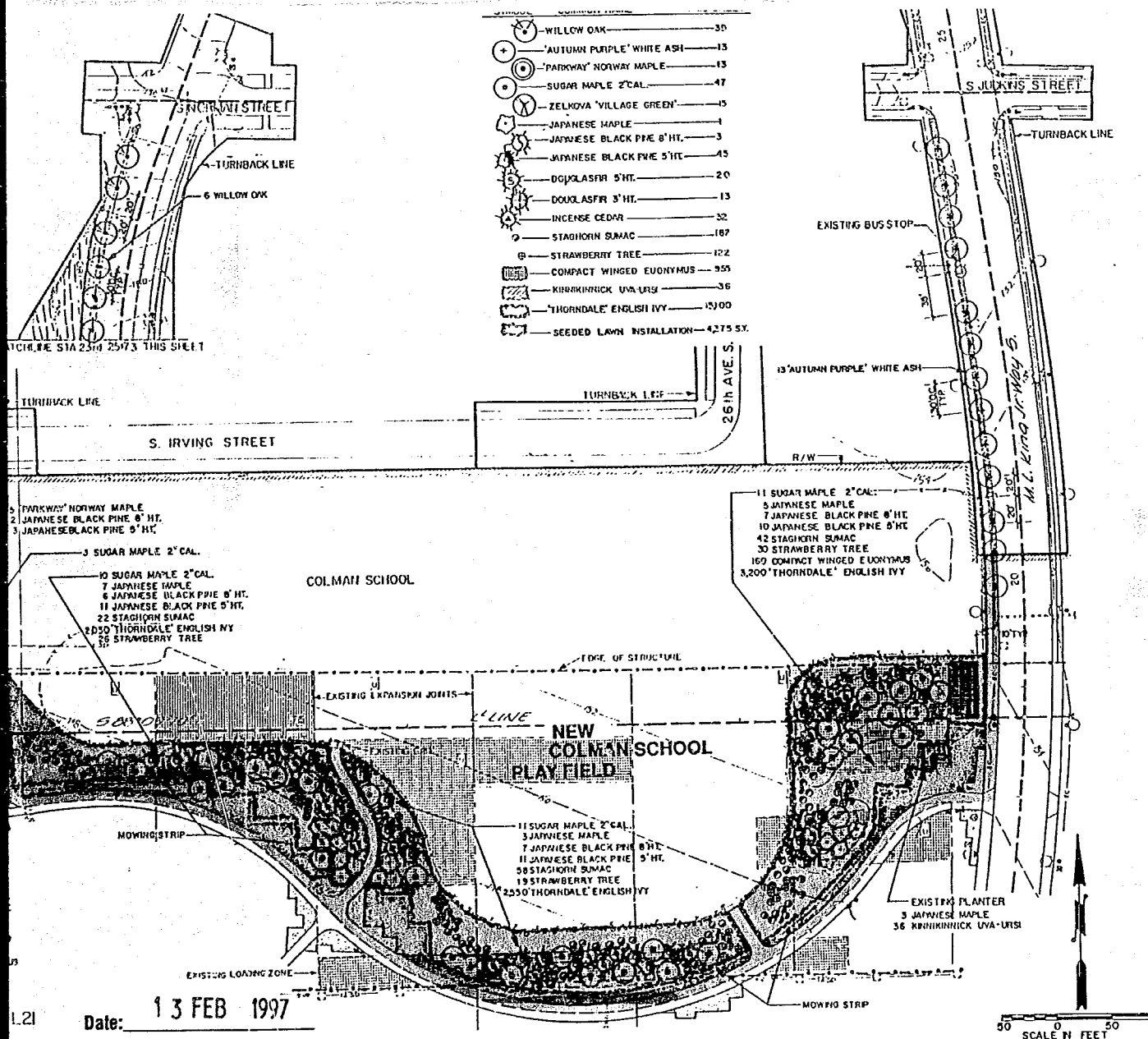
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SR 90



				STATE	FED. AID PROJ. NO.	F-111	TOTAL	HIGHWAY DIVISION	
				10	WASH				
TAWN P.E.A.									
SIGNED J.B. P.E.A.				JOB NUMBER					
CHECKED J.B.									
LOJ. ENGR. D.HOWE				CONTRACT NO.				APPROVED	
ST. ADM. R. ANDERSON				DATE	REVISION	BY	APP'D		

DOT FORM 221-011  
Revised 9/82



HIGHWAY DIVISION



Washington State  
Department of Transportation

SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1

SHEET 6 OF 10

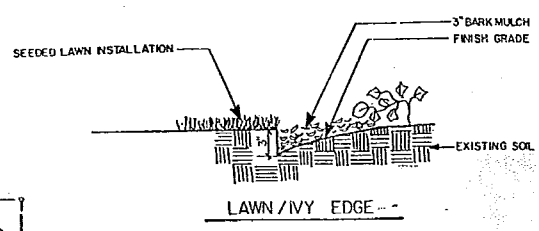
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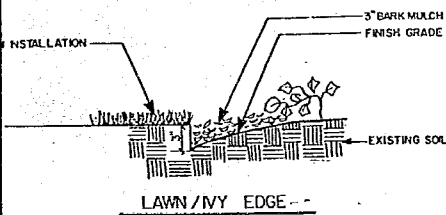
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**APPROVED**

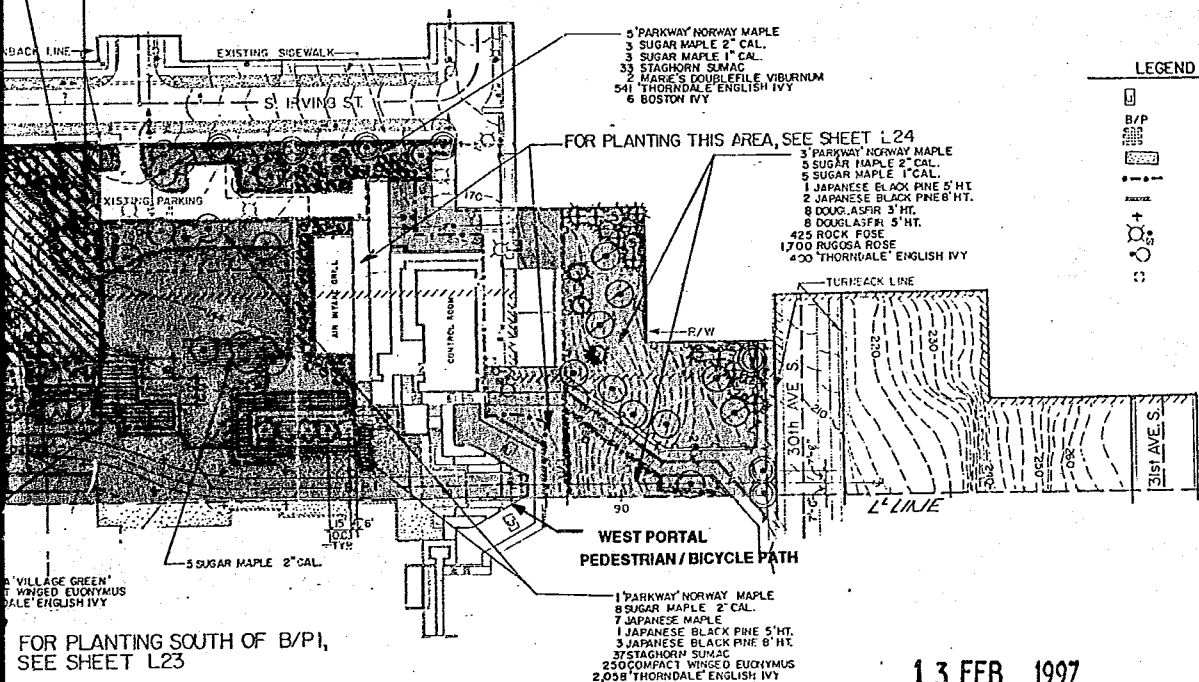
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SYMBOL	COMMON NAME	THIS SHEET
(Symbol)	'AUTUMN PURPLE' WHITE ASH	16
(Symbol)	'PARKWAY' NORWAY MAPLE	12
(Symbol)	SUGAR MAPLE 1\"CAL.	8
(Symbol)	SUGAR MAPLE 2\"CAL.	51
(Symbol)	ZELKOVA 'VILLAGE GREEN'	5
(Symbol)	JAPANESE MAPLE	12
(Symbol)	JAPANESE BLACK PINE 8' HT.	19
(Symbol)	JAPANESE BLACK PINE 5' HT.	6
(Symbol)	DOUGLASFIR 5' HT.	13
(Symbol)	DOUGLASFIR 3' HT.	12
(Symbol)	STAGHORN SUMAC	81
(Symbol)	COMPACT WINGED EUONYMUS	1050
(Symbol)	KINKIKINICK OVA-URS8	36
(Symbol)	'THORNDALE' ENGLISH IVY	6,634
(Symbol)	RUGOSA ROSE	1700
(Symbol)	ROCK ROSE	125
(Symbol)	SEEDED LAWN INSTALLATION	17,608 SQ.
(Symbol)	BOSTON IVY	6
(Symbol)	MARIE'S DOUBLEFILE VIBURNUM	2

EASEMENT FOR  
DRAINAGE & IRRIGATION

30' EASEMENT  
FOR STRUCTURAL WALL  
MAINTENANCE AND CONTROLLER



LEGEND

(Symbol)	UTILIDOOD ACCESS OPENING
(Symbol)	BICYCLE, PEDESTRIAN PATH
(Symbol)	LOADING ZONE
(Symbol)	EXPOSED AGGREGATE
(Symbol)	EDGE OF STRUCTURE
(Symbol)	WALL
(Symbol)	ARTWORK
(Symbol)	LUMINAIRE AND JUNCTION BOX
(Symbol)	TROLLEY POLE
(Symbol)	CATCH BASIN

Date: 13 FEB 1997

SCALE IN FEET  
0 50 100

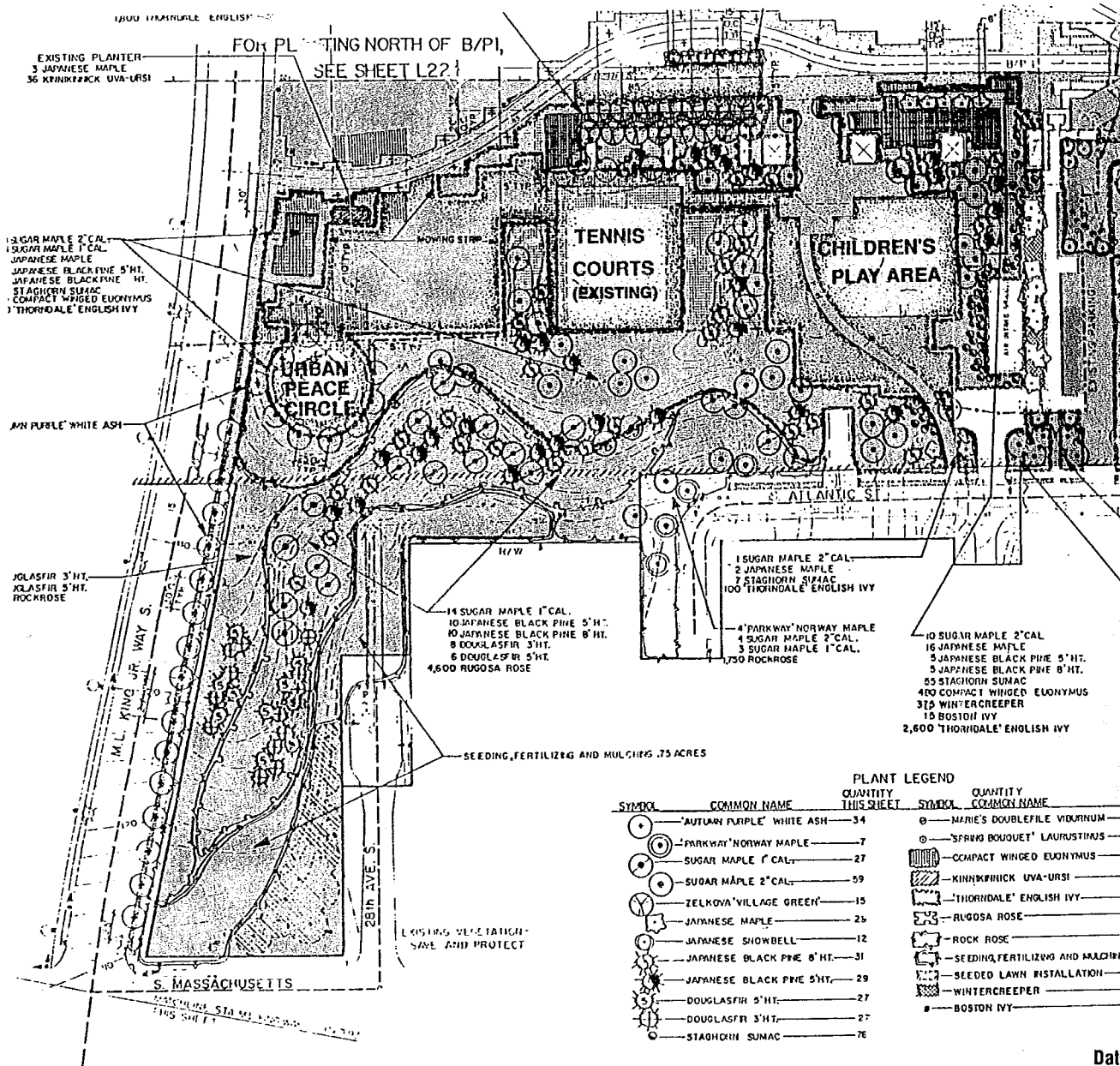


Washington State  
Department of Transportation

SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1

SHEET 8 OF 10

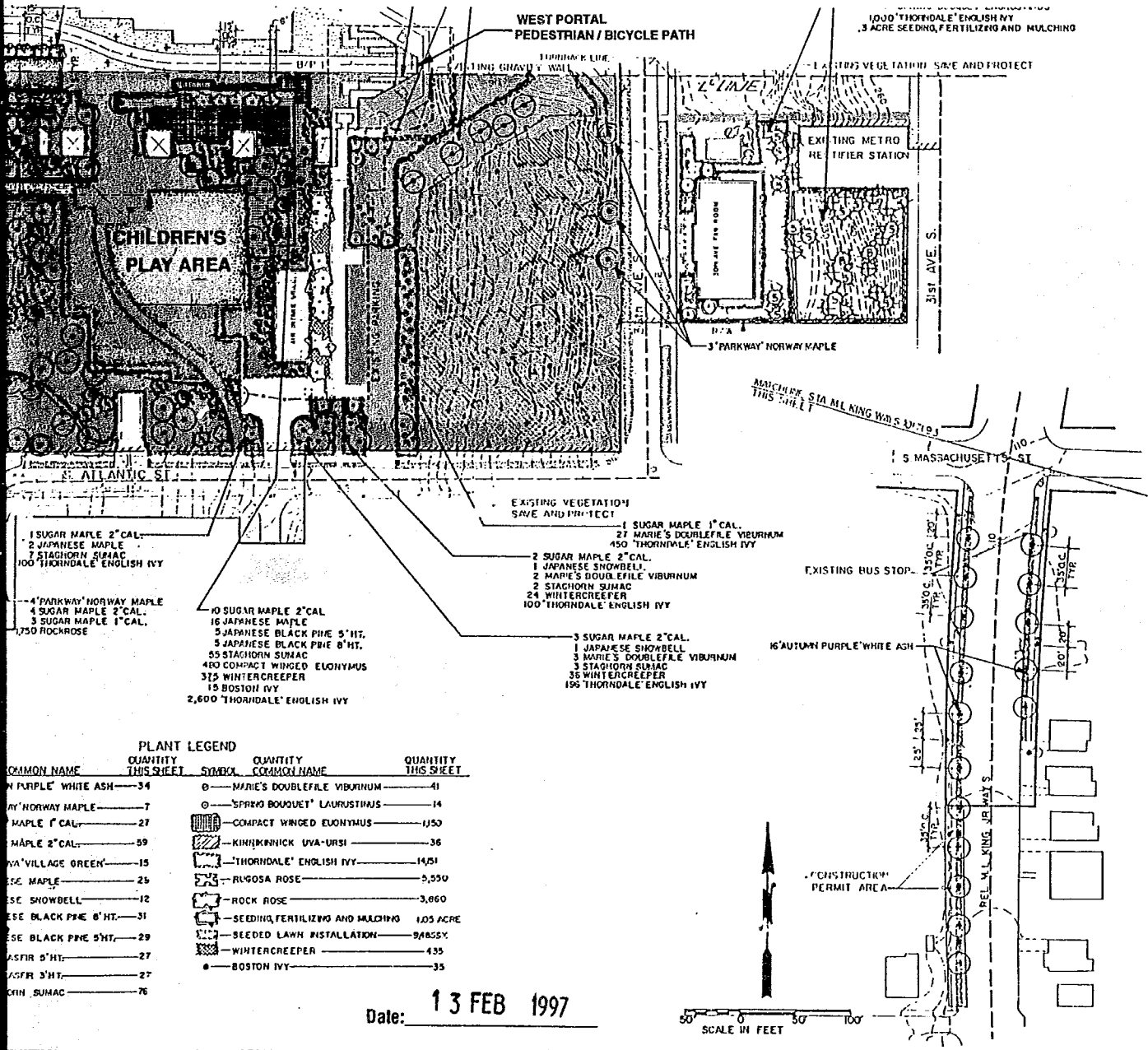
APPROVED



NAME		MEDICAL NO.		STATE	FED. AID PROJ. NO.	UNIT NO.	TOTAL P-113
AN PEA				10	WASH		
MEDICAL NO.				JOB NUMBER			
J. ENGR. D. HOWE				CONTRACT NO.			
ADM. R. ANDERSON							
DATE	REVISION	BY	APP'D	APPROVED			

DOT FORM 221-012  
Revised 10/83

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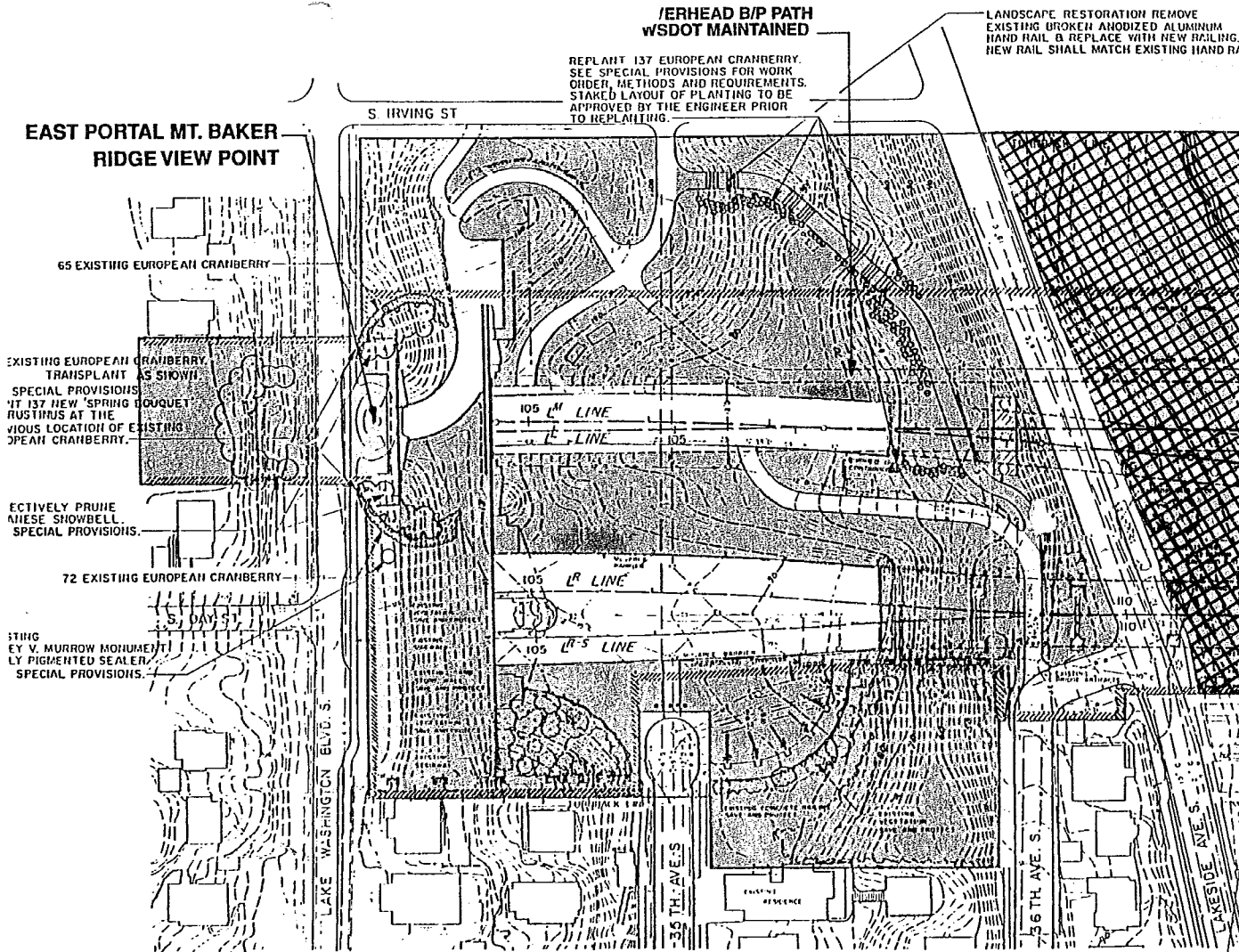
Washington State  
Department of Transportation

SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1

SHEET 9 OF 10

L23

**EAST PORTAL MT. BAKER  
RIDGE VIEW POINT**



PERSON	STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
10	WASH	ID-IR-090-11(402)		
JOB NUMBER		UNIT 2		
94W064		111-090-11(402)		
CONTRACT NO.		UNIT 2		
4540				

PROGRAM DEVELOPMENT  
DIVISION

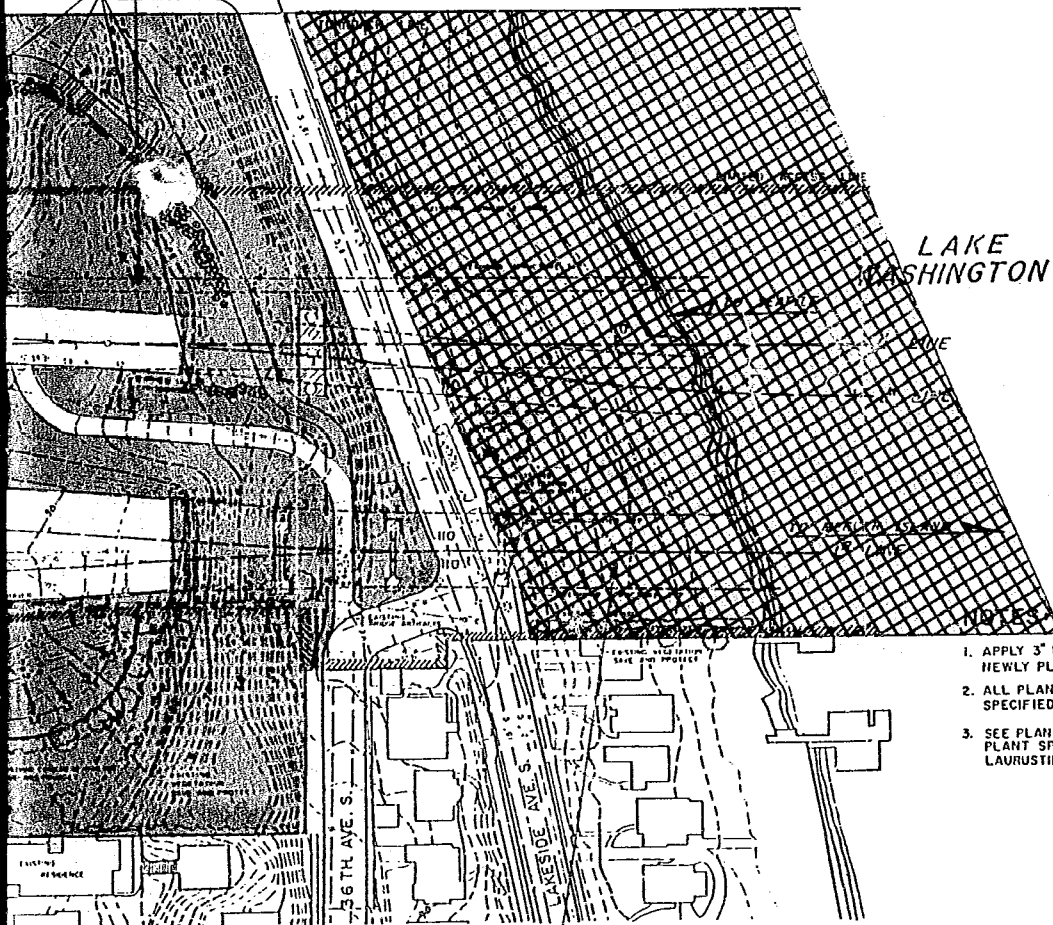




B/P PATH  
CONTAINED

STRANDBERRY.  
FOR WORK  
REQUIREMENTS.  
TO BE  
ER PRIOR

LANDSCAPE RESTORATION REMOVE  
EXISTING BROKEN ANODIZED ALUMINUM  
HAND RAIL & REPLACE WITH NEW RAILING.  
NEW RAIL SHALL MATCH EXISTING HAND RAIL.



LAKE  
WASHINGTON

1. APPLY 3" LAYER OF BARK MULCH AROUND ALL  
NEWLY PLANTED SHRUBS.
2. ALL PLANTS SHALL BE FERTILIZED AS  
SPECIFIED. SEE SPECIAL PROVISIONS.
3. SEE PLANT MATERIAL LIST SHEET 2/ FOR  
PLANT SPECIFICATIONS, 'SPRING BOUQUET'  
LAURUSTINUS.

DAY STREET  
WATER FRONT AREA

Date: 13 FEB 1997



PROGRAM DEVELOPMENT  
DIVISION



Washington State  
Department of Transportation

SR 90  
SEATTLE MAINTENANCE AGREEMENT  
EXHIBIT # 1

SHEET 10 OF 10

SP8

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002556

GM1319

RA-1-10542  
IC:1-17-05677

GROUND LEASE

THIS IS A LEASE entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, hereinafter called "WSDOT," and THE CITY OF SEATTLE, hereinafter called "Lessee";

WHEREAS, the land and premises to be leased are not presently needed exclusively for highway purposes;

WHEREAS, WSDOT is granted authority to lease property under Ch. 47.12.120;

WHEREAS, WSDOT and the Lessee deem it to be in the best public interest to enter into this Lease;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED THAT:

1. PREMISES. WSDOT does hereby lease to the Lessee and Lessee does hereby lease from WSDOT that certain property in King County, State of Washington, and described as follows: 2.30 acres of property known as the "Old Colman School Playground" as shown shaded in yellow on Exhibit Roman Numeral I (which is attached hereto, and by this reference, is made a part hereof), the legal description for which is as follows:

Lots 1 through 18, inclusive and the alley between said lots, Block 1, Eureka Addition, according to the plat thereof recorded in Volume 16 of Plats, page 43, in King County, Washington;

TOGETHER WITH all that portion of 24th Avenue South as vacated by City of Seattle Ordinance Number 74959 lying between the westerly projection of the northerly and the southerly lines of said Block 1, and easterly of a line drawn at right angles to the L Line Survey SR 90, Jct. SR 5 to W. Shore Mercer Island, Sec. 1, Jct. SR5 to Bradner Pl. So. that runs through Highway Engineer's Station (hereinafter referred to as HES) L 71+87.59 on said L Line;

FINAL (2/13/97)

Exhibit 3 to Open Space And Recreation  
Area I-90 Maintenance, Redevelopment  
And Land Conveyance Agreement

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The lands herein described contain an area of 2.30 Acres, more or less, the specific details concerning all of which are to be found within that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia and bearing date of approval February 29, 1980.

2. **EFFECTIVE DATE OF LEASE.** This Lease is effective upon its full execution by the parties hereto. Possession of the site by the Lessee will occur on April 1, 1998, unless another date is determined by mutual agreement.

3. **CONSIDERATION.** Upon possession by the Lessee and in lieu of the remittance of cash by the Lessee to the WSDOT as rent for the Premises, the WSDOT shall be entitled to a credit against a portion of the payment to be made by the WSDOT to the Lessee for the performance of landscape maintenance services under the separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement executed concurrent with this Lease by the parties hereto, which agreement, by this reference, is incorporated herein. The initial amount of such annual credit shall be Twenty-nine thousand three hundred twelve dollars (\$29,312) (1996 Dollars).

The amount of the WSDOT's credit shall be redetermined five (5) years from the date of execution of this Lease, and in five (5) year increments thereafter. This amount shall reflect changes in comparable rents as identified in an appraisal conducted by WSDOT and shall be made in the following manner:

A. WSDOT shall give sixty (60) days written notice to the Lessee that a rent adjustment is being made. This notice shall include the amount of the adjusted rental rate and the date the new rate is to become effective.

B. If the Lessee does not agree with WSDOT's determination of fair market rental value rent, the Lessee will notify WSDOT within thirty (30) days of receipt of the rental increase notice and state its intention to either not continue the Lease or, at Lessee's expense, secure and submit to WSDOT a survey of comparable rents from an appraiser having at least three (3) years of experience as an appraiser of commercial property in Washington State. In making the rental appraisal the appraiser shall utilize comparable land rentals reflecting a highest and best use similar to that of the Premises. WSDOT shall in good faith consider the appraisal and, if deemed appropriate, revise the rental rate accordingly. In the event the Lessee fails to comply with the provisions of this paragraph, the rental rate initially proposed by WSDOT will be deemed accepted.

C. Within each such five (5) year period, the appraised market rental value of the Premises and resulting credit shall

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be adjusted annually in July of each year by multiplying the most recently established monthly rental and credit amount by seventy-five percent (75%) of the amount of the percentage change that occurred during the preceding calendar year in the U.S. Consumer Price Index for All Urban Consumers ("U.S.-CPI"), using the data as published by the Washington State Department of Revenue, Office of the Economic Forecast Council, or its successor; Provided, that in the event such index is discontinued, the parties hereto shall select and use for such adjustment purpose, another, similar index that reflects consumer price changes in the U.S.-CPI.

4. **TERM.** The term of this Lease shall be 20 years, or until termination of this Lease pursuant to the provisions herein, whichever comes first. If this Lease is still in effect at the expiration of 20 years, renewal of said Lease will be considered.

5. **NONAPPLICABILITY OF RELOCATION ASSISTANCE.** The Lessee acknowledges that the signing of this Lease does not entitle the Lessee to assistance under the Uniform Relocation and Real Property Acquisition Act (chapter 8.26 RCW).

6. **ENCUMBRANCES.** It is expressly understood that the Lessee shall not legally encumber the Premises.

7. **TAXES, UTILITIES AND ASSESSMENTS.** WSDOT shall arrange for the transfer of all billing accounts for utility services provided to the Premises from WSDOT's name to the Lessee's name effective on the date this Lease is executed, unless otherwise agreed to by the parties. The Lessee agrees to promptly pay all bills for utilities or other services supplied to the Premises. The Lessee shall pay that share of all assessments imposed on or with respect to the Premises that is the Lessee's obligation under RCW 79.44.010, and to also pay all taxes which may hereafter be levied or imposed upon the interest of the Lessee or by reason of this Lease.

8. **USE OF PREMISES.**

A. **General Requirements:** No use other than park and recreation use shall be permitted without the prior written approval of WSDOT. All grading and construction plans and any changes thereof are subject to the prior written approval by WSDOT. Furthermore, in using the Premises, it is expressly agreed that the Lessee shall comply with all applicable federal, state, and local laws, ordinances, regulations, and environmental requirements. The Lessee hereby agrees to indemnify, defend and hold WSDOT harmless from claims or suits resulting from the Lessee's failure to comply with such requirements.

B. **Flammable/Hazardous Substances:** Except as otherwise provided herein, the Lessee shall not store, bring or allow to

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be brought onto the Premises any toxic or hazardous substances as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Federal Superfund), 42 U.S.C. Section 9601 et seq., and the Washington Model Toxics Control Act (MTCA), RCW 70.105D et seq., or flammable substances including but not limited to explosives, petroleum products, paint, solvents and resins, without the express written permission of WSDOT.

WSDOT hereby grants permission for the Lessee to bring onto the Premises and to reasonably use toxic, hazardous or flammable substances that are regularly used on Lessee's property to carry out the Lessee's own park and recreation operation and maintenance objectives and functions or are otherwise deemed by the Lessee to be necessary or appropriate to carry out the Lessee's landscaping maintenance responsibilities under this Lease. Pesticides may be used by the Lessee for landscape maintenance in accordance with the manufacturer's directions at the Lessee's risk. The disposal of any and all toxic, hazardous, or flammable substances stored, brought on or allowed to be brought onto the Premises by the Lessee must be done in a legal manner by the Lessee.

Lessee hereby agrees to indemnify, defend and hold WSDOT harmless for any costs or liabilities associated with the removal or remediation of any hazardous, toxic or flammable substances including gasoline and other petroleum product, that has been released, or has otherwise come to be located on the Premises as a result of the activities of the Lessee and any of its agents, employees, contractors or the contractor's subcontractors. "Costs" shall include but not be limited to all response cost, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include but not be limited to the Comprehensive Environmental Response, Comprehensive, and Liability Act, 42 U.S.C. Section 9601; the Clean Water Act, 33 U.S.C. Section 1251; the Clean Air Act, 42 U.S.C. Section 7401; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; and the Washington Model Toxics Control Act, RCW 70.105D.010.

Lessee further agrees to retain any and all liabilities from the offsite disposal; handling, treatment, storage, or transportation of any toxic, hazardous or flammable substances, including petroleum products, removed from the Premises and that liabilities under this section (Flammable/Hazardous Substances) shall survive the expiration or termination of this Lease.

C. Special Events: The Lessee may issue permits for the presentation of special events or uses on the Premises provided that each such intended event meets the following

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minimum requirements and any other reasonable requirement deemed necessary by WSDOT:

- (1) The event or use does not affect or impact the traveled lanes or the operation of I-90 or its ramps, and is consistent with the park-like atmosphere intended for the Premises;
- (2) Ten percent (10%) of all event, use, permit or other fees collected by the City for allowing the event or activity on the Premises, and ten percent (10%) of the gross receipts for any commercial, money-making event sponsored by the Lessee or any other Lessee-authorized group on the Premises shall be applied as a credit against the money that is owed to the Lessee by the Lessor WSDOT for maintenance services under the separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto. Provided, that no payment percentage will be charged on event, use, permit or other fees that directly reimburse the Lessee for services provided by the Lessee that are directly associated with such event or activity (e.g. police services). The Lessee shall maintain adequate records of events, uses, fees, and gross receipts received in relation to said events or uses and shall provide said records to WSDOT within thirty (30) days after the end of said event or use;
- (3) The Lessee, in the case of a Lessee produced event, warrants that it is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the Lessee is not self-insured, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- (4) The Lessee-authorized group, in the case of other than Lessee produced events, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- (5) The Lessee, in the case of a Lessee produced event, agrees to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the special event activity;
- (6) The Lessee, in other than Lessee produced events, shall require the permittee to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the activities authorized by the permit;

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- (7) The Lessee assumes responsibility for all clean up and repair of any damage resulting from the use or event.

9. UTILITIES, UTILITY FRANCHISES AND PERMITS. WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain existing facilities and, for itself, to grant utility franchises and/or permits across the Premises; Provided, that WSDOT shall require every utility franchise and permit holder issued a franchise or permit after the effective date of this Lease to provide to the Lessee's Superintendent of Parks & Recreation, except in an emergency, not less than forty-eight (48) hours prior written notice of any intent by such utility franchise or permit holder to enter upon the Premises, and in the event of an emergency, prior notice to such official by telephone at 206-684-8022, (or such other telephone number as may be designated by the Lessee by written notice to WSDOT) regarding such intended entry. The WSDOT shall require such entry, maintenance and installation to be accomplished in such a manner as to minimize any disruption to the Lessee. The WSDOT shall require all franchise/permit holders to restore paving, grading, landscaping and other improvements to the Premises that are damaged or destroyed by any such entry, installation or maintenance work by or for such utility franchisee or permittee to at least as good a condition as such paving, grading, landscaping and improvements were in immediately prior to the commencement of such franchisee's or permittee's entry or work.

The Lessee will not disturb markers installed by a franchise/permit holder. Prior to tilling of the soil or the undertaking of any other operation of the Lessee in which earth, rock, or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater, the Lessee must provide notice to all owners of underground facilities by calling 1-800-424-5555 (or such other telephone number as may be designated). Furthermore, the Lessee must comply with all provisions of Ch. 19.122 RCW relating to underground facilities. Violation of this statute is subject to a possible civil penalty.

10. IMPROVEMENTS.

- A. WSDOT shall not be required to make any improvements to or perform any maintenance or repairs upon any part of the Premises.
- B. WSDOT's Approval of Lessee's Plans for Design and Construction: The Lessee shall not be permitted to make any improvements to the Premises without the prior written approval of the WSDOT. The Lessee covenants that any regrading or improvements to be constructed on the Premises by the Lessee will not at any time during or after construction either damage, threaten to damage or

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otherwise adversely affect any part or element of the highway facility under or immediately adjacent to the Premises or the operation thereof as then developed and used. The WSDOT shall be furnished with two sets of complete plans, details and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises by the Lessee, and no such work shall be done by the Lessee on the Premises without prior written approval of such plans by the WSDOT, which approval shall not be unreasonably withheld or delayed. All construction work by the Lessee shall be done in conformity with the plans and specifications as approved by the WSDOT. The WSDOT may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure compliance with the WSDOT-approved plans and specifications, protection of all parts and elements of the highway facility and compliance with WSDOT's construction and safety standards. The improvements shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and construction when necessary.

- C. Liens. Nothing in this Lease shall be deemed to make the Lessee the agent of WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. The Lessee acknowledges that WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the Lessee.

11. **PERSONAL PROPERTY.** WSDOT shall not be liable in any manner for, or on account of, any loss of damage sustained to any property of whatsoever kind stored, kept, used or maintained in or about the Premises, except for such claims or losses that are caused by WSDOT, its employees, or any of its authorized agents, contractors, or contractor's subcontractors.

12. **INSURANCE.** Lessee warrants that it is self-insured, and agrees to provide acceptable evidence in the form of a certification of its self-insured status to WSDOT or, if the Lessee is not self-insured, to secure liability insurance in the form and amount reasonably determined necessary by WSDOT; Provided, that WSDOT may reasonably adjust said coverage requirements from time to time based on risk factors and the adequacy of the stated policy limits.

13. **WSDOT'S RIGHT OF ENTRY AND INSPECTION.** The WSDOT, for itself, its agents and contractors and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for inspection purposes, including the inspection of any excavation, construction or maintenance work being done by the Lessee. Further, the WSDOT, for itself, its agents and

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contractors, and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for the purpose of maintenance, construction or reconstruction of the highway facility or any element thereof. Provided, No such entry, for the purpose of maintenance, construction or reconstruction shall occur without at least seven (7) days' prior written notice to the Lessee. In the event of an emergency only prior notice by telephone to Superintendent of Parks and Recreation at 206-684-8022 (or such other person or telephone number as may be designated by Lessee by written notice to WSDOT) shall be required.

The WSDOT shall in no way be responsible for any incidental or consequential damages due to loss of use by Lessee caused by any such entry.

In the event of any such entry, inspection, maintenance, construction or reconstruction of the highway facility or any element thereof by the WSDOT, or any of its agents, employees, contractors, or contractor's subcontractors, WSDOT shall ensure that such entry and work is performed in such a manner as to protect public safety and minimize any disruption to the Lessee. Following the completion of such inspection, maintenance, construction or reconstruction, any paving, grading, landscaping and other improvements on the Premises damaged by such entry, inspection, construction or reconstruction work shall be restored or repaired by or for the WSDOT to at least as good a condition as such paving, grading, landscaping and other improvements were in immediately prior to the commencement of such activity.

The parties expressly agree that nothing herein precludes any WSDOT employee, agent or contractor from using the Premises as a member of the general public.

14. **MAINTENANCE.** The Lessee shall perform or cause to be performed at the Lessee's expense all maintenance of the Premises which will include but is not limited to, fence maintenance, maintenance of the paved areas, control of noxious weeds, litter, dust, and erosion, and must keep the Premises in good condition, both as to safety and appearance, to the reasonable satisfaction of the WSDOT.

15. **HOLD HARMLESS.**

A. **Lessee's Indemnification:** The Lessee shall protect, save, hold harmless, and defend the WSDOT and its authorized agents, officers, and employees and the Federal Highway Administration from all claims, actions, costs, damages and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the Lessee, or any of its officers, agents, employees, licensees, invitees, contractors, or the contractor's subcontractors on the Premises under this Lease.



B. WSDOT's Indemnification: WSDOT shall protect, save, and hold harmless and defend the Lessee and its officers, employees, and authorized agents from all claims, actions, costs, damages, or expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of WSDOT related to activities reserved to the WSDOT, or any of its officers, agents, employees, contractors or the contractor's subcontractors on the Premises under this Lease.

C. Concurrent Negligence or Actions Covered by RCW 4.24.115: If the claims or damages are caused by or result from the concurrent negligence of (i) WSDOT, or any of its officers, agents, employees, contractors or contractor's subcontractors and (ii) the Lessee, or any of its officers, employees, licensees, invitees, agents, contractors or the contractor's subcontractors, or involves any action covered by RCW 4.24.115, a party's indemnification obligation hereunder shall be valid and enforceable only to the extent of the negligence of such party or any of its officers, agents, employees, licensees, invitees, contractors or the contractor's subcontractors, as appropriate.

16. NONDISCRIMINATION. The Lessee, for itself and its successors, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental, or physical handicap shall be unlawfully excluded from participation in, be unlawfully denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the Premises; that in connection with the construction of any improvement on said lands and the furnishing of services thereon, no such discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors; that such discrimination shall not be practiced against the public in their access to and use of the facility and service provided for public accommodation constructed or operated on, over, or under the space of the right of way; and that the Lessee shall use the Premises in compliance with all other requirements imposed pursuant to the Ch. 49.60 RCW and 49 CFR Part 21, and as said Regulations may be amended. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the Lessor to terminate this lease in accordance with the procedures set forth herein.

17. DEFAULT. Upon the material breach of this Lease by either party hereto, the other party may give to the party allegedly in breach notice specifying the nature of such breach, the period of time within which such breach must be cured, and at the option of the party giving such notice, such party's intention to declare a default and to terminate this Lease in the event such

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breach is not cured within the specified cure period. Neither party shall be in default unless it fails to perform an obligation required of it within the cure period, which time shall not extend more than thirty (30) days after the date of the notice of breach, except that if the nature of the obligation is such that more than thirty (30) days is required for performance or cure, then the party alleged in breach shall not be in default if such party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The non-defaulting party may in writing, at its option, extend the cure period if in the judgment of the non-breaching party, an extension is justified. After expiration of the cure period, and any extension thereof, if one or more defaults remains unremedied, this Lease shall terminate without further notice; and Provided, that if the breach is by the Lessee, WSDOT shall have the option of giving notice in writing of its intention to cure a non-emergent default or verbal notice if the default is deemed an emergency by the WSDOT, by itself or through use of agents or contractors. The Lessee agrees to reimburse WSDOT within thirty (30) days of the date of WSDOT's invoice for resultant direct costs WSDOT incurs in curing such default or, in the alternative, the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto in an amount equal to the cost incurred in curing the default.

**18. INTERRUPTION, TERMINATION, & PARTIAL TERMINATION.**

A. This Lease shall terminate upon termination of the Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement, unless the parties hereto amend this Lease in writing to provide for an alternative payment of rent to WSDOT;

B. Interruption: In the case of a transportation need not expected to last until the end of the term hereof, WSDOT shall have only the right to interrupt this Lease for the period of need, at the end of which WSDOT shall promptly restore the Premises to a physical condition that is equal or better than the condition it was in immediately prior to such interruption, and promptly thereafter shall restore use of the Premises to the Lessee. During any such period of interruption, Lessee shall have no responsibility or obligation hereunder to perform any maintenance work with respect to the area of the Premises that is affected by such interruption and the rent credit as provided in Section 3 hereof shall be adjusted downward for the period of interruption according to the following formula:

Adjusted Rent Credit =  $C \times (A \div 2.30) \times (N \div 365)$  where

"C" equals the amount of annual rent credit otherwise due to WSDOT pursuant to Section 3 of this Lease at the time of the WSDOT interruption;

"A" equals the amount of the Premises (in full and partial acres) made unavailable for the Lessee's use and occupancy because of the WSDOT interruption; and

"N" equals the number of days in each year during which the WSDOT interruption continues in effect (which days shall commence on the date specified in the WSDOT notice of interruption given pursuant to Section 27 of this Lease or the actual first date of such interruption, whichever is earlier, and shall end on the final date of such interruption, as specified in a WSDOT notice given pursuant to Section 27 of this Lease or the actual ending date of such interruption, whichever is later).

This subsection shall become operable upon the effective date of possession pursuant to Section 2 of this Lease.

C. Termination by WSDOT: WSDOT may terminate this Lease in whole or in part:

(1) Immediately, in the event the Premises is needed for an emergency transportation purpose;

(2) On 180 days' written notice, if the Premises is needed for a transportation need. If the transportation need does not, in WSDOT's determination, require terminating the use and occupancy rights with respect to all of the Premises, the Lessee may continue to lease the unaffected remainder of the Premises under the terms and conditions of this Lease;

(3) In the event that it becomes apparent, in WSDOT's sole judgment, that the Premises have ceased to be used or have been abandoned for a continuous period of sixty (60) days, WSDOT, at its option, shall have the right to terminate this Lease, provided due notice of such apparent default and WSDOT's intent to terminate this Lease shall be given to the Lessee not less than thirty (30) days prior to the proposed termination date together with a demand to cure such default within such thirty (30) day cure period.

(4) For default as provided herein.

D. Termination by Lessee for Default by WSDOT: The leasing of all of the Premises may be terminated by the Lessee, if the WSDOT has breached this Lease and, after WSDOT's receipt of notice of such breach, such breach has not been cured within the time period specified in Section 17 hereof. For purposes

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of termination under this provision, Lessee may declare any of the following a breach by the WSDOT, unless otherwise mutually agreed to:

(1) The interruption of the Lessee's use and occupancy of the Premises or a portion thereof for a period of more than one year;

(2) The adoption of any policy or regulation by WSDOT that makes the maintenance of the Premises or any portion thereof unreasonably difficult or expensive or the use and occupancy of the Premises or any portion thereof economically or operationally unreasonable or unacceptable to the Lessee or that unreasonably limits or restricts the occupancy or uses as allowed under this Lease of the Premises; and

(3) The failure of the Lessor to indemnify the Lessee as provided elsewhere herein.

**19. SURRENDER UPON TERMINATION.**

A. Except as otherwise provided herein, upon termination or expiration of this Lease, the Lessee shall cease its operation on and/or use of the affected Premises. In the event the Lessee fails to vacate the Premises on the date of termination or expiration, it shall be liable for any and all costs to WSDOT arising from such failure.

**B. Condition of Property Upon Surrender:**

(1) Prior to termination for convenience by the Lessee, or termination for a Lessee default where the Lessee has not made diligent efforts to cure the default, or expiration of this Lease, the Lessee shall remove from the Premises, at no cost or expense to the WSDOT, all improvements, trade fixtures, equipment, furnishings, and other personal property owned and/or placed in or on the Premises by the Lessee and restore the same to as good or better condition as it was in prior to the execution of this Lease, reasonable wear and tear excepted, unless the parties agree in writing otherwise. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to the WSDOT.

(2) In the event the Lease is terminated by WSDOT because of a Lessee default and the Lessee has diligently attempted to cure the default within the cure period but was unable to do so, the Lessee shall be granted a 120 day permit to enter upon the affected Premises to at its expense remove all improvements and restore the same to

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as good or better condition as it was in prior to the execution of this Lease, reasonable wear and tear excepted, unless the parties agree in writing otherwise. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to WSDOT. Further, Lessee hereby agrees to retain all liability and to protect, save, and hold harmless and defend WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of the acts or omissions of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors or any persons whomsoever on the Premises for which the improvement is located until said removal and restoration is complete. The liability and indemnification obligations contained in this section shall survive the expiration or termination of this Lease.

(3) In the event the Lease is terminated by WSDOT for a transportation need or for convenience, or by the Lessee for a WSDOT default as provided elsewhere herein, the Lessee is not obligated to remove improvements, trade fixtures, equipment, furnishings and other personal property from the Premises, but shall have the right to remove Lessee's items it desires prior to the effective termination date. With any such removal, Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to the WSDOT, unless the parties mutually agree otherwise.

C. Disposition of Unremoved Improvements and Property: In the event that the Lessee has not removed its improvements, trade fixtures, equipment, furnishings, and other personal property, upon termination or expiration of this Lease or as otherwise required herein, the improvements and property shall become the property of the WSDOT and WSDOT may dispose of the property and improvements at Lessee's expense in a manner prescribed by the WSDOT and the Lessee shall reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such removal and disposal within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in removing and disposing of the improvements and property; Provided, further that this

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provision does not apply where termination is as provided in paragraph 19.B(3).

D. Failure to Restore the Premises: In the event the Lessee fails to restore the portion of the Premises to be surrendered to as good or better condition as it was in prior to the execution of this Lease, reasonable wear and tear excepted, or as otherwise agreed to by parties in writing, upon termination or expiration of this Lease, or as otherwise provided herein, the WSDOT may restore said Premises at Lessee's expense and the Lessee will reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such restoration within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in restoring the property; Provided, further that this provision does not apply where termination is as provided in paragraph 19B(3).

20. ASSIGNMENTS, SUBLEASES & SUBCONTRACTS. The Lessee shall not assign this Lease or sublet any part of the Premises without WSDOT's prior written consent. The Lessee covenants that this Lease is entered into as a principal and that the Lessee is not acting for any undisclosed principal. Nothing herein shall prohibit the Lessee from contracting with a third party to perform the maintenance work agreed to herein with the prior written approval of WSDOT, which approval shall not be unreasonably withheld. Any such contract shall not relieve the Lessee of its obligation to maintain the Premises as agreed herein.

21. MODIFICATIONS. This instrument contains all the agreements and conditions made between the parties hereto pertaining to the leasing of the Premises, and may not be modified orally or in any other manner other than by an agreement in writing signed by all parties hereto.

22. WAIVERS. The receipt by WSDOT of Premises maintenance services, with knowledge of any breach of this Lease by the Lessee, or of any default on the part of the Lessee in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to a waiver of any provision of this Lease. No failure on the part of either party to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by either party, unless in writing, shall discharge or invalidate such covenant or provision or affect the right of such party to enforce the same in the event of any subsequent breach or default.

23. CUMULATIVE REMEDIES. All remedies available at law or in equity to either party for breach of this Lease are cumulative and may be exercised concurrently or separately, and the exercise

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of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

24. **TOTALITY OF AGREEMENT.** It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by either party hereto except those that are expressed in this Lease.

25. **BINDING AGREEMENT.** This Lease shall not be valid and binding upon Lessor unless and until accepted and approved by the Secretary of Transportation or his duly authorized representative.

26. **INTERPRETATION.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this lease are for convenience only, and shall have no effect on the construction or interpretation of any part hereof.

27. **NOTICES.** Except as provided elsewhere herein, wherever in this Lease a written notice is to be given or made, it shall be sent by certified mail, postage prepaid addressed to the intended recipient at the respective address shown herein, or personally served on the party at the address listed below, unless such recipient has specified a different address by prior written notice sent to the other party hereto:

TO WSDOT:	PROPERTY MANAGEMENT SUPERVISOR DEPARTMENT OF TRANSPORTATION Mail Stop 7338 P. O. Box 4 7338 Olympia, WA 98504-7338
COPY TO:	Northwest Region Maintenance Engineer DEPARTMENT OF TRANSPORTATION P.O. Box 330310 15700 Dayton Avenue North Seattle, WA 98133-9710
TO LESSEE:	Superintendent of Parks & Recreation THE CITY OF SEATTLE Administration Building 100 Dexter Avenue North Seattle, WA 98109

Said notices shall be effective upon receipt of notices in the manner described above.

28. **RESTRICTION.** In accordance with Agreement GC8704, dated December 1, 1989, between the State of Washington and Seattle School District No. 1, (attached hereto as Exhibit Roman Numeral II) the Premises is subject to a restriction that it will not be used for school purposes. Nothing in this Lease or Agreement GC8704 restricts or prohibits use of the Premises by the Lessee for

FINAL (2/13/97)

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the providing of instruction in games, sports, arts and crafts, or similar and normal park and recreation functions or activities.

29. **NEGOTIATED AGREEMENT.** The parties to this Lease acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, the parties hereto have had their respective representatives sign their names in the spaces below:

Dated: 25 April 1997

THE CITY OF SEATTLE

By: Lyndal E. Juantorena, Jr.  
Title: Acting Superintendent

Dated: 4/18/97

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

By: Loach - Perkins  
(Name and title of WSDOT)  
DIRECTOR, REAL ESTATE SERVICES

APPROVED AS TO FORM ONLY:

February 13, 1997  
By: Bruce Brown  
Assistant Attorney General

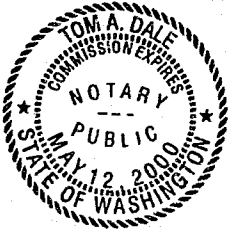
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STATE OF WASHINGTON )  
 ) ss. (WSDOT ACKNOWLEDGMENT)  
COUNTY OF THURSTON )

On this 18th day of April, 1997, before me personally appeared Joschim Pectingst, to me known to be the duly appointed Director, Real Estate Services, Washington State Department of Transportation, who stated, on oath, that he executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein set forth, and that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



Tom A. Dale  
(Signature)  
Tom A. Dale  
(Print or type name of notary)  
Notary Public in and for the State of Washington,  
residing at Elm  
My commission expires 5/12/00

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STATE OF WASHINGTON )  
 ) ss. (CITY ACKNOWLEDGMENT)  
THE COUNTY OF KING )

On this 25<sup>th</sup> day of APRIL, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CYRIL E. B. JUANITA FOR KENNETH BOUND'S to me known to be the ACTING Superintendent of Parks & Recreation of The City of Seattle, who on oath stated that HE executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes herein mentioned, and that HE was authorized to execute the said instrument for and on behalf of The City of Seattle.

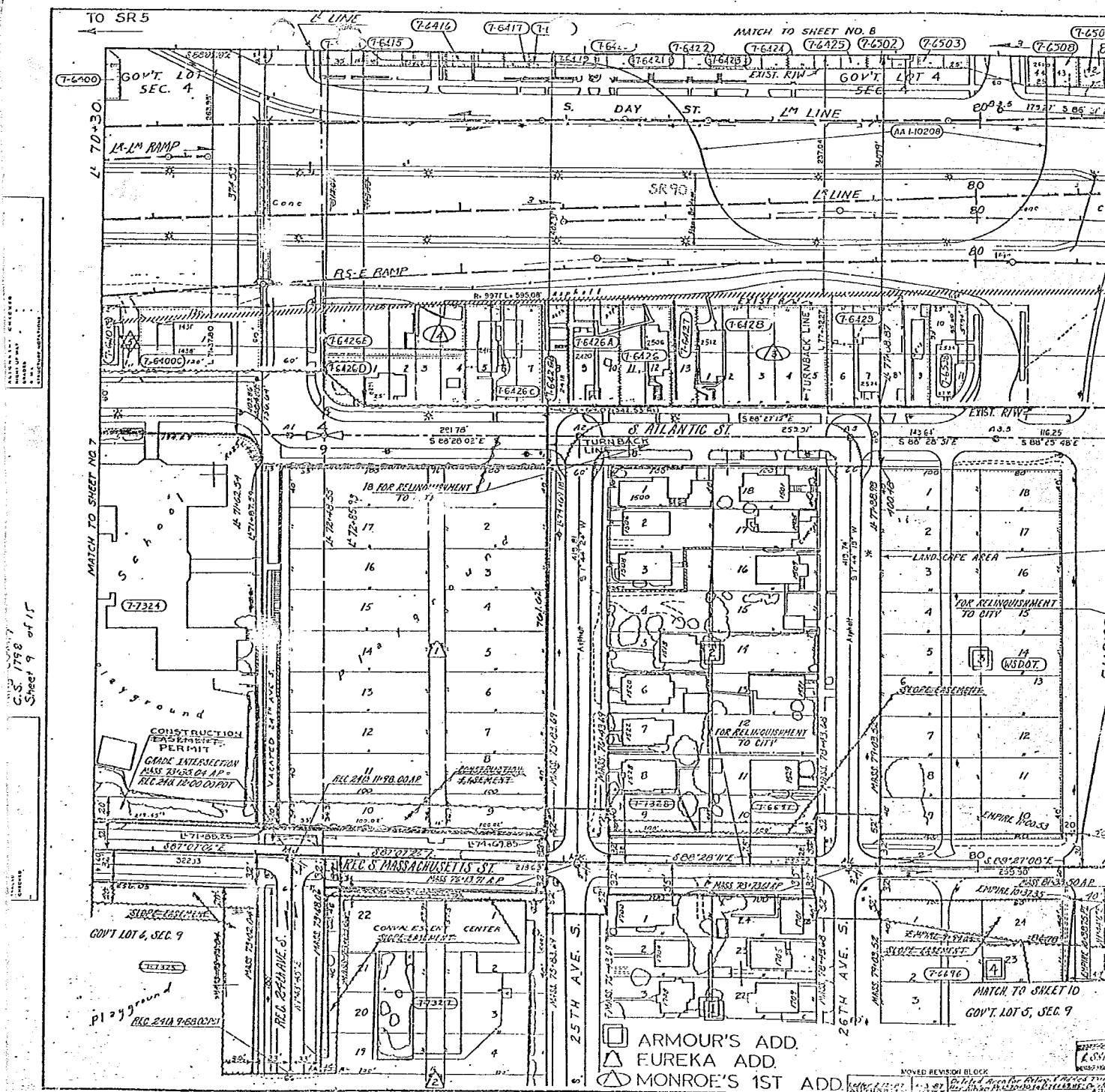
WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

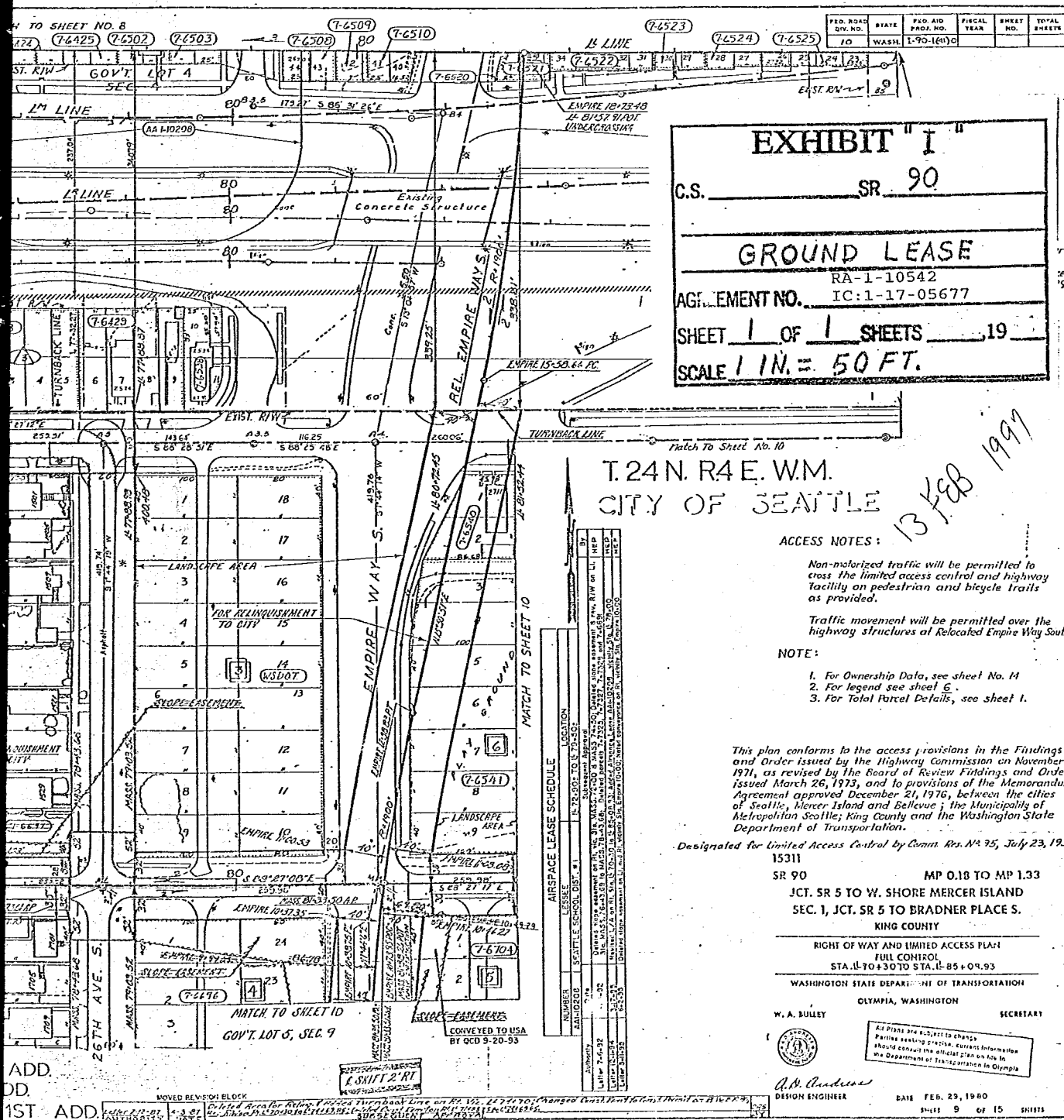


John C. Richter  
(Signature)

John C. Richter  
(Print or type name of notary)  
Notary Public in and for the State Washington,  
residing at LYNNWOOD  
My commission expires 8-8-98

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(Rev. 9/15/89)

AGREEMENT GC 8704  
FEDERAL AID NO. I-90-1( )  
COLMAN SCHOOL REPLACEMENT  
PHASE 2, CONSTRUCTION

THIS AGREEMENT is made and entered into this 1st day of December, 1989 between the State of Washington, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter referred to as the "State", and Seattle School District NO. 1, located at 815 Fourth Avenue North, Seattle, Washington 98109, hereinafter referred to as the "District".

WHEREAS, the State, pursuant to RCW 47.52.180, was directed to:

1. Reimburse the District for the costs of providing an alternate site for a school and playground of equivalent utility to the present site;
2. Reimburse the District for the replacement cost of a new school building of equivalent utility to the present Colman School; and
3. Reimburse the District for the cost of outfitting the school with furniture and equipment suitable to the new school building to the extent that such costs are eligible for participation by the Federal Highway Administration, hereinafter referred to as the "FHWA" (generally the cost of furniture or equipment permanently attached or dedicated to the new school building will be considered for eligibility); and

EXHIBIT II  
GM1319

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WHEREAS, the District has submitted to the State its plans showing the site selected for the new school and playground, the specifications and estimated costs for designing, constructing, and furnishing a new school; and

WHEREAS, the District has already incurred substantial costs associated with the environmental, site selection, preliminary engineering, and plans, specification and estimates processes with the intent of entering into a further agreement for construction with the State; and

WHEREAS, it is deemed to be in the best public interest for the District to proceed with the Phase 2 construction for the facility at this time; and

WHEREAS, the District and State have entered into a Possession and Use Agreement and a Construction Permit providing for the State's use of a portion of the present Colman School site;

NOW THEREFORE, in consideration of the terms, covenants and performance contained herein, or attached and incorporated and made part thereof,

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IT IS MUTUALLY AGREED AS FOLLOWS:

I.

GENERAL

The District shall furnish the labor, materials, equipment and tools required for Phase 2 construction of a new Colman School, as described in Exhibit "A" attached hereto, and by this reference made a part of this Agreement.

The District shall perform, control and manage the work in accordance with the District's A & E Monitoring guidelines.

The State and FHWA shall have the right to review the work in progress and take samples of materials to be included in the construction of the school facility.

The State concurs with the use of the consulting firms of TRA and Mahlum and Nordfors under their existing continuing contracts.

The District shall not enter into any additional contracts for the performance of any work under this agreement without written permission of the State. It is recognized that the State is not a party to any work or contract that may be entered into by the District and third parties to complete the work and the State's obligation is solely for the reimbursement of costs and conveyance of property interests consistent with the terms of this Agreement.

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The District agrees that the old Colman building and site will not be used for school purposes. A violation of this provision shall be deemed a material breach of this Agreement and will entitle the State to all remedies available to it including the right to enjoin such usage. The District consents to entry of an injunction in the event of District violation of this provision.

The State shall furnish the land for the site of the new Colman School in accordance with Paragraph VII.A and B.

## II

### DESCRIPTION OF WORK

The work of this Agreement consists of construction administration, payment to contractors, sales tax, contingencies, inspection, testing, and other related work.

## III.

### TRANSFER OF TITLE OF OLD COLMAN SCHOOL PROPERTY

Prior to award of the contract for construction of the new Colman School, the District shall convey clear title to that portion of the old Colman property needed for I-90 right-of-way and other areas now used by the State under its Possession and Use Agreement (approximately 114,447 square feet).

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IV.

TIME FOR BEGINNING AND COMPLETION

The District shall not begin any work under the terms of this Agreement until authorized in writing by the State. All work under the Agreement shall be completed within 430 days after contract award by the District.

The established completion time shall not be extended because of any delays attributable to the District, but may be extended by the State, in event of delay attributable to the State, or because of unavoidable delays caused by an act of God or governmental actions or other conditions beyond the control of the District. A supplemental agreement, issued by the State, is required prior to extending the established completion date.

V.

CHANGE ORDERS

All change orders shall be submitted to the State for approval prior to the District authorizing the contractor to start the work. The State shall expeditiously review such change orders.

VI.

MATERIALS CERTIFICATION

The District shall submit to the State a certification that materials and construction operations controlled by sampling and testing were in conformance with the contract documents. Said

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certification shall be signed by the responsible District official and submitted to the State prior to requesting final payment.

VII.

TERMINATION OF STATE OBLIGATION

It is understood and agreed that within 90 days after final payment the State will:

- A. Execute a mutual benefits Quit Claim Deed conveying to the District fee title in and to those lands outlined in pink on the attached Exhibit "C".
- B. Execute a mutual benefits Airspace Lease covering those areas outlined in green on the attached Exhibit "C" on such terms and conditions as determined by the State. Said Airspace Lease will be effective only so long as said property is used in conjunction with a public school located on the property described in A above.

The State's obligation to replace Colman School shall be considered complete upon final payment thereof by the State and execution of the necessary documents conveying title to the land and airspace lease for the new school; whichever occurs last.

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VIII.

PAYMENT

The State in consideration of faithful performance of the work to be done by the District agrees to pay the District seventy-five percent (75%) of the actual direct and related indirect cost, Four Million Eight Hundred Fifty Thousand Dollars (\$4,850,000) of performing the work, less Three Hundred Twenty Five Thousand Dollars (\$325,000) the agreed value of that portion of the old Colman property retained by the District. The maximum amount payable, by the State to the District under this Agreement, shall not exceed Four Million Five Hundred Twenty Five Thousand Dollars (\$4,525,000.00) unless a supplemental agreement has been negotiated and executed by the State prior to the State's incurring responsibility for any costs in excess of the aforesaid maximum amount payable. The credit to the State, Three Hundred Twenty Five Thousand Dollars (\$325,000), for that portion of the old Colman School property retained by the District shall be deducted from the monthly progress payments submitted by the District. Such deduction(s) shall begin with the first monthly progress payment and subsequent payments, if required, to satisfy this requirement. An itemized estimate of cost for work to be performed by the District and to be reimbursed by the State (subject to the deduction provided for in the previous sentence) marked Exhibit "B" is attached hereto, and by this reference made a part of this Agreement. Such payment shall be full compensation for the replacement cost of the new Colman School.

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A. Monthly Progress Payments

Partial payments may be made upon request of the District to reimburse costs incurred, and are not to be more frequent than one per month. It is agreed that payment of any partial claim will not constitute agreement by the State as to the appropriateness of any item or assumption of any other responsibility or liability, and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment or underpayment by either party, the parties agree to make such adjustment as required by final audit, not to exceed the maximum amount payable under this Agreement. Either party may resort to other available remedies in the event of dispute over any audit results.

B. Final Payment

The District shall submit a final billing to the State within 90 calendar days following completion of the work involved. The District will maintain sufficient accounting records to clearly distinguish between the Colman School replacement costs that are eligible for FHWA participation and other elements of the District's Phase 1 Capital Improvement Program.

C. Accounting Methods/Inspection of Cost Records

The District and its consultants shall keep available for inspection by representatives of the State and United States,

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for a period of three years after final payment, the cost records and accounts pertaining to this Agreement.

If any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed. Cost records shall be maintained in accordance with a work order accounting procedure as prescribed by the Division of Municipal Corporations of the State Auditors Office.

IX.

AUTHORITY TO BEGIN WORK

The District agrees that any cost incurred prior to the execution of this Agreement and receipt of written notice to proceed by the STATE shall not be eligible for reimbursement under this Agreement.

X.

DISPUTES

Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the District and the State shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this Agreement, except as provided in VIII.A and XI hereof.

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XI.

VENUE

In the event that either party is required to institute legal action or proceedings to enforce any of its rights in this Agreement, both parties agree that any such action shall be brought in the Superior Court of the State of Washington, situated in Thurston County.

XII.

LEGAL RELATIONS

The District shall comply with all federal, state and local laws and ordinances applicable to the work of this Agreement. This contract shall be interpreted and construed in accordance with the laws of Washington.

District, its successors or assigns, will protect, save and hold harmless the State, its authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the District, its assigns, agents, contractors, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement. The District further agrees to defend the State, its agents or employees in any litigation, including payment of any costs or attorney's fees, for any claims or action commenced, thereon arising out of or in connection with acts or activities authorized by this Agreement. This obligation shall not include such claims, costs, damages or expenses which may be caused by

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the sole negligence of the State or its authorized agents or employees; Provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the District, its agents or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the District or District's agents or employees.

No liability shall attach to the State or the District by reason of entering into this Agreement except as expressly provided herein.

#### XIII.

##### EXTRA WORK

The State may authorize the District to perform work or render services in addition to or other than work provided by this Agreement. Such work will be considered as Extra Work and will be specified in a supplement to this Agreement which will set forth the nature and scope of the additional work and payment thereof. Work under a supplemental agreement shall not proceed unless and until authorized in writing by the State. Additional work ordered by the District without the State's prior approval will be done at the expense of the District.

#### XIV.

##### BOARD OF REVIEW FINDINGS AND ORDER AND STIPULATION

The Board of Review's findings and order and stipulation contained therein shall be deemed modified and superseded by the terms of this Agreement to the extent the terms herein are inconsistent with such findings and order and stipulation.

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IN WITNESS WHEREOF, the parties hereto have executed this  
AGREEMENT as of the day and year first above written.

SEATTLE SCHOOL DISTRICT NO. 1

By [Signature]

Title Superintendent

Date October 30, 1989

APPROVED AS TO FORM

Date November 2, 1989

By [Signature]

Assistant Attorney General

STATE OF WASHINGTON

DEPARTMENT OF TRANSPORTATION

By [Signature]

Title Dennis B. Ingham  
Assistant Secretary For  
Program Development

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EXHIBIT "A"

COLMAN SCHOOL REPLACEMENT

A. PRELIMINARY ENGINEERING

1. Investigation and Schematic Design	\$75,000
2. Administration(School District)	12,000
3. Reimbursable	0

Total Preliminary Engineering(Paid under GC 8243)	<u>\$87,000</u>
---	-----------------

B. PHASE 1, PLANS, SPECIFICATIONS, & ESTIMATES(PS&E)	<u>\$468,285</u>
--	------------------

C. PHASE 2, CONSTRUCTION	<u>\$6,462,933</u>
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TOTAL ESTIMATED COLMAN SCHOOL REPLACEMENT COST	<u>\$7,018,218</u>
--	--------------------

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# EXHIBIT "B"

Cost breakdown by activity for work to be completed under Phase 1, PS&E:

## I. Contract Documents/Advertise and Award

- Design Development	\$ 70,000
- Contract Documents	133,000
- Advertise and Award	14,000
- Engineering for Street Reconstruction	25,000
- Value Engineering	16,000
- Energy Evaluation	17,500
- Soils	25,000
- Surveying	15,000
- Permits	63,500
- Transportation Study	5,000
SUB TOTAL	<u>\$384,000</u>

## II. Administration(School District)

- Project Manager: .5 x 9 mos x \$4873/mo	\$21,929
- Project Coordinator: 1 x 9 mos x \$3714/mo	33,426
- Planner: .2 x 9 mos x \$3636/mo	6,509
- Secretary: .1 x 9 mos x \$2400/mo	2,160
- Accountant: .25 x 9 mos x \$2338/mo	5,261
SUB TOTAL	<u>\$69,285</u>

Reimbursables(Printing) 15,000

TOTAL ESTIMATED PHASE 1, PS&E COST \$468,285

STATE PORTION (.75 X \$468,285) = \$351,213.75

DISTRICT PORTION (.25 X \$468,285) = \$117,071.25

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EXHIBIT "B" (continued)

Cost breakdown by activity for work to be completed under Phase 2,  
CONSTRUCTION:

Estimated construction cost	\$5,481,900
8.1% Washington State Sales Tax	444,034
Sub-total	\$5,925,934
5.00% Contingencies	<u>296,297</u>
Sub-total	<u>\$6,222,231</u>
Construction Administration(Consultants)	<u>\$70,000</u>
Inspection/Testing	<u>\$25,000</u>
Construction Administration(School District)	
- Project Manager: .5 x 14 mos x \$4873/mo	\$34,111
- Project Coordinator: 1 x 14 mos x \$3714/mo	51,996
- Construction Specialist: 1 x 14 mos x \$2718/mo	38,052
- Accountant: .25 x 14 mos x \$2338/mo	8,183
- Secretary: .1 x 14 mos x \$2400/mo	<u>3,360</u>
Sub-total	\$135,702
Reimbursables(Printing)	10,000
TOTAL ESTIMATED PHASE 2 CONSTRUCTION COST	<u>\$6,462,933</u>
STATE PORTION (\$6,462,933 x .75 - \$325,000)	<u>=\$4,522,200</u>
DISTRICT PORTION (\$6,462,933 x .25 + \$325,000)	<u>=\$1,940,733</u>

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T. 24 N R. 4 E. W.M.

PROPOSED QUIT CLAIM DEED

PROPOSED AIRSPACE LEASE

S. IRVING ST.

JUDKINS ST.

24TH AVE S.

23RD AVE S.

M.L. KING JR. WAY S.

LEGEND

Proposed Colman School Site

North Edge of Jetway Zone

Top Edge of the Structure

Centerline

EXHIBIT "C"

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Highway Division

COLMAN SCHOOL SITE PLAN

EXHIBIT "C"

002556

WM 1319

ACTIVE RECREATION AREAS

AA-1-10546  
IC:1-17-05680

AIRSPACE LEASE

THIS IS A LEASE entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, hereinafter called the "WSDOT," and THE CITY OF SEATTLE, hereinafter called the "Lessee".

WHEREAS, the land and premises hereinafter described to be leased to the Lessee are not presently needed exclusively for highway purposes; AND WHEREAS, the WSDOT is granted authority to lease property under RCW 47.12.120; AND WHEREAS, the WSDOT and Lessee deem it to be in the best public interest to enter into this lease; AND WHEREAS, Lessee acknowledges that the WSDOT would not have entered into this Lease and agreed to allow the Lessee to develop the Premises for active recreation except for Lessee's promise to maintain the Premises at Lessee's expense;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances described herein, IT IS MUTUALLY AGREED THAT:

1. **PREMISES.** The WSDOT does hereby lease to the Lessee and the Lessee does hereby lease from WSDOT the following areas collectively comprising approximately 5.18 Acres:

Sturgus Artwork (Parcel A, Exhibit "A", Sheet 1 of 7)  
Atlantic Street Park (Parcel B, Exhibit "A", Sheet 2 of 7)  
Proposed Tennis Courts (Parcel C, Exhibit "A", Sheet 3 of 7)  
Existing and Proposed Basketball Courts (Parcel D, Exhibit "A", Sheet 3 of 7)  
Tract 37 Screening Fence (Parcel E, Exhibit "A", Sheet 4 of 7)  
Sportsfield (Parcel F, Exhibit "A", Sheet 5 of 7)  
Urban Peace Circle (Parcel G, Exhibit "A", Sheet 5 of 7)  
Existing Tennis Courts (Parcel H, Exhibit "A", Sheets 5 & 6 of 7)  
Children's Play Area (Parcel I, Exhibit "A", Sheet 6 of 7)  
East Portal Mt. Baker Ridge Viewpoint (on Lake Washington Blvd. South) (Parcel J, Exhibit "A", Sheet 7 of 7)

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Exhibit 4 to Open Space And Recreation  
Area I-90 Maintenance, Redevelopment  
And Land Conveyance Agreement

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IT IS DUE TO THE QUALITY OF THE DOCUMENT.

all of which are and shall be identified by blue shading on Exhibit "A," which is attached hereto and by this reference incorporated the "Premises". The Premises is legally described in Exhibit "B" attached hereto and by this reference incorporated herein.

2. **TERM.** The term of this Lease shall commence on the date it is fully executed and shall continue in full force and effect thereafter for a period of 20 years or until terminated pursuant to the provisions herein, whichever is the earlier. The Lessee shall have the option of continuing its tenancy of the Premises for additional twenty (20) year terms; Provided, that at the time the renewal is scheduled to commence, the Lessee is in substantial compliance with all the terms and conditions of this Lease.

3. **SIGNAGE.** Within ninety days after the commencement of this Lease, Lessee, at its expense, shall erect and maintain permanent signs approved by WSDOT as to quantity, location, and design, which approval shall not be withheld unreasonably, stating as follows:

"This public park is located on highway right of way under an agreement between The City of Seattle and the Washington State Department of Transportation."

4. **CONSIDERATION.** The Lessee's assumption of maintenance responsibilities for the Premises as specified herein serves as consideration for this Lease.

5. **NONAPPLICABILITY OF RELOCATION ASSISTANCE.** The Lessee acknowledges that the signing of this Lease does not entitle the Lessee to assistance under the Uniform Relocation and Real Property Acquisition Act (chapter 8.26 RCW).

6. **USE OF PREMISES.**

a. **Use Authorized By WSDOT:** No use other than the maintenance and operation of the Premises for active recreation purposes including but not limited to tennis courts, sportsfields, playgrounds, basketball courts, picnic tables and benches, art works, viewpoints, and other similar uses or for the fenced screening of Tract 37 shall be permitted without the prior written approval of the WSDOT. In using the Premises, the Lessee shall comply with all policies and regulations heretofore or hereafter promulgated by the Department of Transportation relative to the safety of the motoring public and the highway facility that are transmitted, in writing, to the Lessee not less than thirty (30) days prior to the date the Lessee is obligated to comply with the same (except for emergency policies and regulations, which shall be effective immediately upon their adoption and the receipt by the Lessee of the text thereof and notice from the WSDOT of its emergency adoption of the same).

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b. Compliance With Law: In using the Premises, it is expressly agreed that Lessee must comply with all applicable federal, state and local laws, ordinances, and regulations, including environmental requirements that are in force or that may hereafter be in force, and shall secure all necessary permits and licenses. Direct access to ramps or traveled lanes of limited access highways is not permitted.

c. Flammable/Hazardous Substances: Except as otherwise provided herein, the Lessee shall not store, bring or allow to be brought onto the Premises any toxic or hazardous substances as defined under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or Federal Superfund) (42 U.S.C. § 9601 et seq.), and the Washington Model Toxics Control Act (MCTA), RCW 70.105D et seq. or flammable substances, which flammable substances include but are not limited to explosives, petroleum products, paint, solvents, and resins, without the express written permission of WSDOT.

WSDOT hereby grants permission for the Lessee to bring onto the Premises and to reasonably use toxic, hazardous or flammable substances that are regularly used on Lessee's property to carry out the Lessee's own park and recreation operation and maintenance objectives and functions or are otherwise deemed by the Lessee to be necessary or appropriate to carry out the Lessee's landscaping maintenance responsibilities under this Lease. Pesticides may be used for landscape maintenance in accordance with manufacturer's directions at the Lessee's risk. Disposal of any and all toxic, hazardous, or flammable substances stored, brought on or allowed to be brought onto the Premises by the Lessee shall be done in a legal manner by Lessee.

Lessee hereby agrees to indemnify, defend and hold WSDOT harmless for any costs or liabilities associated with the removal or remediation of any hazardous, toxic or flammable substance, including gasoline or other petroleum product, that has been released or otherwise has come to be located upon the Premises by the activities of the Lessee, and any of its employees, agents, licensees, contractors, or the contractor's subcontractors. "Costs" shall include but not be limited to all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include but not be limited to the Comprehensive Environmental Response, Comprehensive, and Liability Act, 42 U.S.C. Section 9601; the Clean Water Act, 33 U.S.C. Section 1251; the Clean Air Act, 42 U.S.C. Section 7401; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; and the Washington Model Toxics Control Act, RCW 70.105D.010.

Lessee further agrees to retain any and all liabilities from the offsite disposal, handling, treatment, storage, or

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transportation of any toxic, hazardous or flammable substances, including petroleum products, removed from the Premises and that liabilities under this section (Flammable/Hazardous Substances) shall survive the expiration or termination of this Lease.

d. Signage, Display Lighting, Advertising & Fencing: Signs, display lights, and advertising media/materials are not permitted unless completely detailed on a separate plan sheet and have received specific prior written approval by WSDOT. Fences in place at the time of execution of this Lease or placed on the Premises by the Lessee, with the concurrence of WSDOT, and the Tract 37 Screening Fence will be maintained by the Lessee for the duration of the Lease. Nothing is to be attached to any fence by the Lessee without prior written approval by WSDOT.

e. Special Events: The Lessee may issue permits for the presentation of special events or uses on the Premises provided that WSDOT is given 10 days prior written notice describing the event and each such intended event meets the following minimum requirements and any other reasonable requirement deemed necessary by WSDOT:

(1) The event or use does not affect or impact the traveled lanes or the operation of I-90 or its ramps, and is consistent with the park-like atmosphere intended for the Premises;

(2) The event does not exceed the structural loading limits of the design of the I-90 "lid" for live loads;

(3) Ten percent (10%) of all event, use, permit or other fees collected by the Lessee for allowing the event or activity on the Premises, and ten percent (10%) of the gross receipts for any commercial, money-making event sponsored by the Lessee or any other Lessee-authorized group on the Premises shall be applied as a credit against the money that is owed to the Lessee by the WSDOT for maintenance services under the separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, which by this reference is incorporated herein; Provided, that no payment percentage will be charged on event, use, permit or other fees that directly reimburse the Lessee for services provided by the Lessee that are directly associated with such event, use or activity (e.g. police services). The Lessee shall maintain adequate records of events, uses, fees, and gross receipts received in relation to said events or uses and shall provide said records to the WSDOT within thirty (30) days after the end of said event or use;

(4) The Lessee, in the case of a Lessee produced event, warrants that it is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the Lessee is not self-insured, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;

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(5) The Lessee-authorized group, in the case of other than Lessee produced events, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;

(6) The Lessee, in the case of a Lessee produced event, agrees to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the special event activity;

(7) The Lessee, in other than Lessee produced events, shall require the permittee to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the activities authorized by the permit;

(8) The Lessee assumes responsibility for all clean up and repair of any damage resulting from the use or event.

f. Encumbrances. It is expressly understood that the Lessee shall not legally encumber the Premises.

7. **PERSONAL PROPERTY.** WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, used or maintained in or about the Premises, except for such claims or losses that are caused by WSDOT, its employees, or any of its authorized agents, contractors, or contractor's subcontractors.

8. **ENVIRONMENTAL AUDITS.** Lessee will reasonably cooperate in any environmental audits conducted by WSDOT's staff or independent third parties. WSDOT shall ensure that no environmental audit is undertaken with respect to the Premises without prior written notice to the Lessee, and shall require that in the conduct of each such audit, the Lessee's use and occupancy of the Premises not be unreasonably disturbed. Lessee will reimburse WSDOT for the cost of any audit through which Lessee-caused contamination is found. Lessee will provide WSDOT with notice of any inspections with respect to the Premises that are known to Lessee, notices of violations, and orders to clean up contamination. Lessee will permit WSDOT to participate in all settlement or abatement discussions regarding environmental contamination remediation measures that may be required of the Lessee under law or this Lease. In the event the Lessee fails to commence environmental contamination remediation measures as duly directed by a state, federal, or local regulatory agency within 90 days of the date of any notice to take such measures, the WSDOT may elect to perform such work, and Lessee covenants and agrees to reimburse WSDOT for all costs associated with WSDOT's work if such remediation work was a Lessee obligation under law or this Lease.

9. **WSDOT HAZARDOUS SUBSTANCE INDEMNIFICATION.** WSDOT hereby agrees to indemnify, defend and hold Lessee harmless for any costs

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or liabilities associated with the removal or remediation of any hazardous substances that are (1) located upon the Premises prior to the Lessee's occupancy of the Premises or the execution of this Lease, whichever is the earlier; and (2) which come to be located on the Premises by any act of the WSDOT, or any of its agents, employees, contractors or contractor's subcontractors.

**10. MAINTENANCE RESPONSIBILITIES.**

a. The Lessee's maintenance responsibilities with respect to the Premises shall be as follows:

(1) At a minimum, maintaining such areas at a level equal to or better than the medium level of care as identified in Exhibit C attached hereto and incorporated herein by this reference;

(2) Because of the special free draining nature of the soils on the I-90 lid structure, being responsible for ensuring that the landscaping gets sufficient water to keep the landscaping alive; and if the necessary irrigation is not provided, being responsible for the replacement of landscaping that dies or is severely damaged due to lack of water;

(3) Maintaining the drainage systems within the Premises; and

(4) Removing any and all graffiti.

b. The WSDOT shall maintain and repair the structural components of retaining walls and the I-90 lid structure.

**11. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT UTILITY FRANCHISES AND PERMITS.** The WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain existing facilities and, for itself, to grant utility franchises and/or permits across the Premises; Provided, that WSDOT shall require every utility franchise and permit holder issued a permit or franchise after the execution date of this Lease, to provide to the Lessee's Superintendent of Parks & Recreation, except in an emergency, not less than forty-eight (48) hours prior written notice of any intent by such utility franchise or permit holder to enter upon or perform any work on the Premises, and in the event of an emergency, to provide prior notice to such official by telephone at 206-684-8022 (or such other telephone number as may be designated by Lessee by written notice to WSDOT) regarding such intended entry or work. WSDOT shall require the franchise or permit holder to accomplish such maintenance or installation in such a manner as to minimize any disruption to the Lessee. The WSDOT shall require all franchise/permit holders to restore paving, grading, landscaping and other improvements damaged by the entry, improvement or maintenance work by or for the utility

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franchise or permit holder to at least as good a condition as such paving, grading, landscaping and improvements were in immediately prior to the commencement of such franchisee's or permittee's improvement work.

The Lessee will not disturb markers installed by a franchise/permit holder. Prior to tilling of the soil or the undertaking of any other operation of the Lessee in which earth, rock, or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater, the Lessee must provide notice to all owners of underground facilities by calling 1-800-424-5555 (or such other telephone number as may be designated). Furthermore, the Lessee must comply with all provisions of Ch. 19.122 RCW relating to underground facilities. Violation of this statute is subject to a possible civil penalty.

## **12. PROTECTION OF WSDOT STRUCTURES.**

a. The Lessee shall inform its employees, agents, contractors, and permittees who, as such, have any City authorization to affect, or official function or responsibility with respect to, any portion of the special "soil system" on the top of the I-90 Project Lid, regarding such system (which consists of a waterproof membrane, drainage systems, filter fabric, drain gravel, irrigation system and topsoil), and prohibit the damaging of such system by any such person or entity;

b. The Lessee shall prohibit any excavation, drilling, or driving of any stake or other material into the special "soil system" by any of its employees, agents, contractors, or permittees other than is necessary for the repair of the irrigation system or replacement planting of existing trees and other plants, unless the prior written approval of the WSDOT has been secured with respect to such work;

c. The Lessee shall prohibit any excavation or other work by any of its employees, agents, contractors, and permittees that would jeopardize the I-90 walls and tie back system, unless the prior written approval of the WSDOT Northwest Region Maintenance Engineer has been secured with respect to such work through the Property Management Supervisor as provided in Section 26;

d. In the event that WSDOT structures and systems referenced in this section are damaged by any activity authorized under this Lease or if the Lessee fails to prohibit damage to the such structures and systems as provided herein, the Lessee is responsible for the reasonable costs and expenses incurred by the WSDOT in repairing such damage; and

e. The Lessee, at its own expense, shall make whatever provisions beyond those required of the WSDOT under Section 15

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hereof the Lessee deems necessary to protect users of the Premises from any foreseeable hazards resulting from use and operation of the highway.

**13. TAXES, ASSESSMENTS AND UTILITIES.** The Lessee shall pay that share of all assessments imposed on or with respect to the Premises that is the Lessee's obligation under RCW 79.44.010, and also pay all taxes which may hereafter be levied or imposed upon the interest of the Lessee or by reason of this Lease. The Lessee is responsible for and agrees to pay for utilities or other services which serve the Premises.

**14. IMPROVEMENTS.**

a. WSDOT shall not be required to make any improvements to or perform any maintenance or repairs upon any part of the Premises.

b. WSDOT's Approval of Lessee's Plans for Design and Construction: The Lessee shall not be permitted to make any additional improvements to the Premises without the prior written approval of the WSDOT. The Lessee covenants that any regrading or improvements to be constructed on the Premises by the Lessee will not at any time during or after construction either damage, threaten to damage or otherwise adversely affect any part or element of the highway facility under or immediately adjacent to the Premises or the operation thereof as then developed and used. The WSDOT shall be furnished with two sets of complete plans, details and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises by the Lessee, and no such work shall be done by the Lessee on the Premises without prior written approval of such plans by the WSDOT, which approval shall not be unreasonably withheld or delayed. All construction work by the Lessee shall be done in conformity with the plans and specifications as approved by the WSDOT. The WSDOT may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure compliance with the WSDOT-approved plans and specifications, protection of all parts and elements of the highway facility and compliance with WSDOT's construction and safety standards. The improvements shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and construction when necessary.

c. Liens: Nothing in this Lease shall be deemed to make the Lessee the agent of the WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. The Lessee acknowledges that the WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the Lessee.

15. **WSDOT'S RIGHT OF ENTRY AND INSPECTION.** The WSDOT, for itself, its agents and contractors and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for inspection purposes, including the inspection of any excavation, construction or maintenance work being done by the Lessee. Further, the WSDOT, for itself, its agents and contractors, and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for the purpose of maintenance, construction or reconstruction of the highway facility or any element thereof. No such entry, for the purpose of maintenance, construction or reconstruction shall occur without at least seven (7) days' prior written notice to the Lessee. In the event of an emergency only prior notice by telephone to Superintendent of Parks and Recreation at 206-684-8022 (or such other person or telephone number as may be designated by Lessee by written notice to WSDOT) shall be required.

The WSDOT shall in no way be responsible for any incidental or consequential damages due to loss of use by Lessee caused by any such entry.

In the event of any such entry, inspection, maintenance, construction or reconstruction of the highway facility or any element thereof by the WSDOT, or any of its agents, employees, contractors, or contractor's subcontractors, WSDOT shall ensure that such entry and work is performed in such a manner as to protect public safety and minimize any disruption to the Lessee. Following the completion of such inspection, maintenance, construction or reconstruction, any paving, grading, landscaping and other improvements on the Premises damaged by such entry, inspection, construction or reconstruction work shall be restored or repaired by or for the WSDOT to at least as good a condition as such paving, grading, landscaping and other improvements were in immediately prior to the commencement of such activity.

The parties expressly agree that nothing herein precludes any WSDOT employee, agent or contractor from using the Premises as a member of the general public.

16. **INSURANCE.** Lessee warrants that it is self-insured, and agrees to provide acceptable evidence in the form of a certification of its self-insured status to WSDOT or, if the Lessee is not self-insured, to secure liability insurance in the form and amount reasonably determined necessary by WSDOT; Provided, that WSDOT may reasonably adjust said coverage requirements from time to time based on risk factors and the adequacy of the stated policy limits.

17. **HOLD HARMLESS/INDEMNIFICATION.**

a. **Lessee's Indemnification:** Lessee, its successors or assigns, will protect, save, and hold harmless and defend the

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WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors on the Premises under this Lease.

b. **WSDOT's Indemnification:** The WSDOT shall protect, save, and hold harmless and defend the Lessee and its officers, employees, and authorized agents from all claims, actions, costs, damages, or expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of WSDOT related to activities reserved to WSDOT, or any of its officers, agents, employees, contractors or the contractor's subcontractors on the Premises under this Lease.

c. **Concurrent Negligence or Actions Covered by RCW 4.24.115:** If the claims or damages are caused by or result from the concurrent negligence of (i) the WSDOT, or any of its officers, employees, agents, contractors, or the contractor's subcontractors, and (ii) the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors, or involves any action covered by RCW 4.24.115, a party's indemnification obligation hereunder shall be valid and enforceable only to the extent of the negligence of such party or any of its officers, agents, employees, licensees, invitees, contractors, or the contractor's subcontractors, as appropriate.

**18. NONDISCRIMINATION.** The Lessee, for itself and its successors, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be unlawfully excluded from participation in, be unlawfully denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the Premises, that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no such unlawful discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, that such unlawful discrimination shall not be practiced against the public in their access to and use of the facility and services provided for public accommodation constructed or operated on, over, or under the right of way, and that the Lessee shall use the Premises in compliance with all other requirements imposed pursuant to Ch.49.60 RCW and 49 C.F.R. Part 21. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the WSDOT to terminate this Lease in accordance with the procedures set forth herein.

**19. DEFAULT.** Upon the material breach of this Lease by

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either party hereto, the other party may give to the party allegedly in breach notice specifying the nature of such breach, the period of time within which such breach must be cured, and at the option of the party giving such notice, such party's intention to declare a default and to terminate this Lease in the event such breach is not cured within the specified cure period. Neither party shall be in default unless it fails to perform an obligation required of it within the cure period, which time shall not extend more than thirty (30) days after the date of the notice of breach, except that if the nature of the obligation is such that more than thirty (30) days is required for performance or cure, then the party alleged in breach shall not be in default if such party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The non-defaulting party may in writing, at its option, extend the cure period if in the judgment of the non-breaching party, an extension is justified. After expiration of the cure period, and any extension thereof, if one or more defaults remains unremedied, this Lease shall terminate without further notice; and Provided, that if the breach is by the Lessee, WSDOT shall have the option of giving notice in writing of its intention to cure a non-emergent default or verbal notice if the default is deemed an emergency by the WSDOT, by itself or through use of agents or contractors. The Lessee agrees to reimburse WSDOT within thirty (30) days of the date of WSDOT's invoice for resultant direct costs WSDOT incurs in curing such default or, in the alternative, the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto in an amount equal to the cost incurred in curing the default.

**20. ASSIGNMENTS.** Neither this Lease nor any rights created by it may be assigned; Provided, that nothing herein shall prohibit the Lessee from contracting with one or more third parties for the performance of the maintenance work described herein, subject to the prior written approval of the WSDOT, which shall not be unreasonably withheld. Any such contract shall not relieve the Lessee of its obligation to maintain the Premises as agreed herein.

**21. BINDING CONTRACT.** This Lease shall not become binding upon the State of Washington unless and until accepted and approved for the Washington State Department of Transportation by the Secretary or his duly authorized representative.

**22. MODIFICATIONS.** This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

**23. INTERPRETATION.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington.

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The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

**24. INTERRUPTION, TERMINATION, AND PARTIAL TERMINATION.**

a. Interruption: In the case of a transportation need not expected to last until the end of the 20-year term, WSDOT shall have only the right to interrupt this Lease for the period of need, at the end of which WSDOT shall promptly restore the Premises to a physical condition that is equal to or better than the condition it was in immediately prior to such interruption, and promptly thereafter shall restore use of the Premises to the Lessee. During any such period of interruption, Lessee shall have no responsibility or obligation hereunder to perform any maintenance work with respect to the area of the Premises that is affected by such interruption.

b. Termination by WSDOT: WSDOT may terminate this Lease in whole or in part:

(1) Immediately if the Premises is needed for an emergency transportation purpose;

(2) On 180 days' written notice, if the Premises is needed for a transportation need. If the transportation need, in WSDOT's determination, does not require terminating use and occupancy rights with respect to all of the Premises, the Lessee shall continue to lease the unaffected remainder of the Premises under the terms and conditions of this Lease; Provided, that if the parties agree that specific use areas within the Premises are no longer functional as a result of partial termination by WSDOT, WSDOT shall redevelop such affected areas to a mutually acceptable condition and Lessee shall continue to maintain the Premises as provided herein. For example, if the partial termination leaves half of a baseball field remaining within the Premises, the remaining area will be redeveloped by the WSDOT to a mutually acceptable condition at WSDOT's expense, and Lessee shall thereafter resume maintenance of such affected area as required by this Lease.

(3) In the event it becomes apparent, in WSDOT's sole judgment, that the Premises have ceased to be used or have been abandoned for a continuous period of sixty (60) days, the WSDOT, at its option, shall have the right to terminate this Lease, provided due notice of such apparent default and the WSDOT's intent to terminate this Lease shall be given to the Lessee not less than thirty (30) days prior to the proposed termination date together with a demand to cure such default within such thirty (30) day cure period.

(4) For default as provided herein.

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c. Termination by Lessee for Convenience: The Lessee may terminate this Lease as to all or any portion of the Premises upon 180 days' prior written notice to the WSDOT.

d. Termination by Lessee for Default by WSDOT: The Lease of all or any portion of the Premises may be terminated by the Lessee as to all or such portion of the Premises if the WSDOT has breached this Lease and, after the WSDOT's receipt of notice of such breach, such breach has not been cured within the time period specified in Section 19 hereof. For purposes of termination under this provision, the Lessee may declare any of the following a breach by the WSDOT, unless otherwise agreed to by the parties:

(1) The interruption of the Lessee's use and occupancy of the Premises or a portion thereof for a period of more than one year;

(2) The failure to redevelop within one (1) year after partial termination any remaining portion of the Premises that has become no longer functional as a result of said partial termination of this Lease by the WSDOT;

(3) The adoption of any policy or regulation by WSDOT that makes the maintenance of the Premises or any portion thereof unreasonably difficult or expensive or the use and occupancy of the Premises or any portion thereof economically or operationally unreasonable or unacceptable to the Lessee or that unreasonably limits or restricts use or occupancy of the Premises for Active Recreation; and

(4) The failure of the WSDOT to indemnify the Lessee as provided elsewhere herein.

25. SUBSEQUENT USE FOR TRANSPORTATION PURPOSES. The Lessee and the WSDOT hereby affirm that upon expiration or termination of this Lease for any reason and the subsequent use of the Premises for highway purposes, regardless of the actual use, such highway use will not be considered the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 U.S.C. 138 and 49 U.S.C. 1653(f).

26. NOTICES. Except as provided elsewhere herein, wherever a written notice is to be given or made, it shall be personally served or sent through the United States Postal Service by certified mail, postage prepaid, addressed to the party at the address listed for it below, or personally served on the party at the address listed below, unless such party has designated, by prior written notice, a different address:

WSDOT: Property Management Supervisor  
DEPARTMENT OF TRANSPORTATION  
Mail Stop 7338

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P. O. Box 4 7338  
Olympia, WA 98504-7338

**COPY TO:** Northwest Region Maintenance Engineer  
DEPARTMENT OF TRANSPORTATION  
P.O. Box 330310  
15700 Dayton Avenue North  
Seattle, WA 98133-9710

**LESSEE:** Superintendent  
Department of Parks & Recreation  
THE CITY OF SEATTLE  
Administration Building  
100 Dexter Avenue North  
Seattle, WA 98109

Said notices shall be effective upon receipt of notices in the manner described above.

**27. CUMULATIVE REMEDIES.** All remedies available at law or in equity to either party for breach of this Lease are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**28. AUTHORITY OF PARTIES' REPRESENTATIVES.**

a. **Superintendent's Authority:** The term "Superintendent" as used throughout this Lease shall mean the Superintendent of the Lessee's Parks & Recreation Department or his/her successor or designee. In regard to any consent and approval rights of the Lessee as provided herein, the Superintendent or his/her successor or designee shall have such approval right. The action of the Superintendent pursuant to or in implementation of this Lease does not constitute any official action by any other City of Seattle department or official that may be required by law, ordinance, rule or regulation.

b. **Northwest Region Maintenance Engineer and Property Management Supervisor Authority:** All references in this Lease to Northwest Region Maintenance Engineer or Property Management Supervisor shall include that official's functional successor(s).

**29. SURRENDER UPON TERMINATION.**

a. **Surrender of Premises:** Except as otherwise provided herein, upon termination or expiration of this Lease, the Lessee shall cease its operations on and/or use of the affected Premises and surrender all affected portions of the Premises to the WSDOT. In the event the Lessee fails to vacate and surrender the Premises on the date provided herein, it shall be liable for any and all

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costs to the WSDOT arising from such failure.

b. Condition of Premises Upon Surrender:

(1) Prior to termination for convenience by the Lessee, as provided elsewhere herein, or for a Lessee default where the Lessee has not diligently attempted to cure the default, or expiration of this Lease, the Lessee shall remove from the Premises, at no cost or expense to the WSDOT, all improvements, trade fixtures, equipment, furnishings, and other personal property owned and/or placed in or on the Premises by the Lessee and restore the same to passive recreation use consistent with the landscaping of the I-90 Lid, to WSDOT's reasonable satisfaction, unless both parties agree in writing that all or part of said improvements, trade fixtures, equipment, furnishings, or other personal property shall remain on the Premises. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to the WSDOT.

(2) In the event the Lease is terminated by WSDOT because of a Lessee default and the Lessee has diligently attempted to cure the default within the cure period but was unable to do so, the Lessee shall be granted a 120 day permit to enter upon the affected Premises and to, at its expense, remove all improvements, trade fixtures, equipment, furnishings, or other personal property and restore the same to passive recreation use consistent with the landscaping of the I-90 Lid, to WSDOT's reasonable satisfaction, unless both parties agree in writing that all or a part of said improvements, trade fixtures, equipment, furnishings or other personal property shall remain on the Premises. The time period for said permit may be extended if in WSDOT's sole judgment, an extension is warranted. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to WSDOT. Further, Lessee hereby agrees to retain all liability and to protect, save, and hold harmless and defend WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, the contractor's subcontractors, or any person whomsoever on the Premises for which the improvement, trade fixture, equipment, furnishing, or other personal property is located until said removal and restoration is complete. The liability and indemnification obligations contained in this section shall survive the expiration or termination of this Lease.

(3) In the event the Lease is terminated by WSDOT for a transportation need or for convenience, or by the Lessee for a

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WSDOT default as provided elsewhere herein, the Lessee is not obligated to remove improvements, trade fixtures, equipment, furnishings and other personal property from the Premises, but has the right to remove Lessee's items it desires prior to the effective termination date. During the first twenty years of this Lease, WSDOT at its expense will replace, relocate, or compensate the Lessee for improvements the Lessee made at Lessee expense in the event the Lease is terminated by WSDOT for a transportation need or for convenience. The amount of compensation will be determined as depreciated value based on the useful life of the improvement.

c. **Disposition of Unremoved Improvements and Property:** In the event that the Lessee has not removed its improvements, trade fixtures, equipment, furnishings, and other personal property upon termination or expiration of this Lease or as otherwise required herein, the improvements and property shall become the property of the WSDOT and WSDOT may dispose of the property and improvements at Lessee's expense in a manner prescribed by the WSDOT and the Lessee shall reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such removal and disposal within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in removing and disposing of the improvements and property; Provided, further that this provision does not apply where termination is as provided in paragraph 29.b(3) herein.

d. **Failure to Restore the Premises:** In the event the Lessee fails to restore the portion of the Premises to be surrendered to passive recreation use consistent with the landscaping of the I-90 Lid to the reasonable satisfaction of WSDOT upon termination or expiration of this Lease, or as otherwise provided herein, the WSDOT may restore said Premises at Lessee's expense and the Lessee will reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such restoration within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in restoring the property; Provided, further that this provision does not apply where termination is as provided in paragraph 29.b(3) herein.

30. **NO WAIVER.** No action other than a notice by one party to the other specifically stating that such notice has the effect of a waiver, shall constitute a waiver of any particular breach or default of such other party. No such notice shall waive a party's failure to fully comply with any other term, condition, or

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provision of this Lease, irrespective of any knowledge any officer, employee, or agent of the other party may have of any breach or default of, or noncompliance with, such other term, condition, or provision. No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Lease. The performance or acceptance of maintenance services for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

**31. SUPERSESION OF PRIOR AGREEMENTS.** This Lease represents the entire agreement of the parties with regard to the subject matter hereof and supersedes any prior agreement not incorporated herein. In the event of any inconsistency between this Lease and any prior agreement, whether written or oral, the terms of this Lease shall prevail.

**32. NEGOTIATED AGREEMENT.** The parties to this Lease acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Lease are not to be construed against any party on the basis of such party's draftsmanship thereof.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

IN WITNESS WHEREOF, the parties hereto have had their respective representatives sign their names in the spaces below:

THE CITY OF SEATTLE  
Lessee

By: David B. Jaramila, Jr.  
Acting Superintendent

Date: 25 April 1997

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION  
WSDOT

By: Joachim P. H. [Signature]  
DIRECTOR, REAL ESTATE SERVICES

Date: 4/18/97

APPROVED AS TO FORM:

By: Bryce Brown  
Assistant Attorney General

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

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STATE OF WASHINGTON )

THE COUNTY OF KING )

ss.

(CITY ACKNOWLEDGMENT)

On this 25<sup>th</sup> day of APRIL, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CYRIL E. F. IVANITIS FOR KENNETH BOUNDS to me known to be the Acting Superintendent of Parks & Recreation of The City of Seattle, who on oath stated that He executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes herein mentioned, and that He was authorized to execute the said instrument for and on behalf of The City of Seattle.

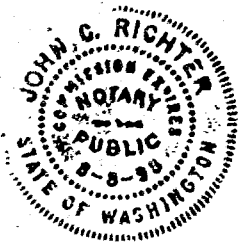
WITNESS my hand and official seal hereto affixed the day and year in this certificate above Written.

John C. Richter  
Signature

John C. Richter  
(Print or type name of notary)

Notary Public in and for the State Washington, residing at CUNNINGHAM

My commission expires 8-8-98



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STATE OF WASHINGTON )  
 ) ss. (WSDOT ACKNOWLEDGMENT)  
COUNTY OF THURSTON )

On this 18th day of April, 1997, before me personally appeared Teachim P. Tinger, to me known to be the duly appointed Director, Real Estate Services, Washington State Department of Transportation, who stated, on oath, that he executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein set forth, and that he was authorized to execute said instrument.

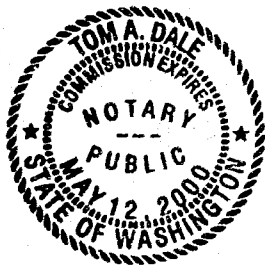
WITNESS my hand and official seal hereto affixed the day and year in this certificate above Written.

Tom A. Dale  
Signature

Tom A. Dale  
(Print or type name of notary)

Notary Public in and for the State Washington, residing at \_\_\_\_\_

E/ma  
My commission expires 5/12/00



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PARCEL "A" (Sturgus Artwork)

A tract of land in Government Lot 9, of Section 5, Township 24 North, Range 4 East, W.M. being portions of Block 41 and a park in the plat of Rainier Boulevard 5th Addition to the City of Seattle, according to the plat thereof recorded in Volume 11 of plats, page 34, portion of Block 2, Orchard Hill Addition to the City of Seattle, according to the plat thereof recorded in Volume 9 of plats page 56 and also portion of South Charles Street, and Sturgus Avenue South, all more particularly described as follows:

Beginning at a point on the northeasterly line of Sturgus Avenue South, that is opposite Highway Engineer's Station (hereinafter referred to as HES) LL 36+16.74 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island Sec. 1, Jct. SR 5 to Bradner Place S., thence northwesterly, along said northeasterly line, to a point opposite HES Golf 15+50.24 P.O.T. on the Rel. Golf-Sturgus Ave. S. Line Survey of said highway and 30 feet northeasterly therefrom; thence northwesterly, parallel with said Rel. Golf-Sturgus Ave. S Line Survey, to a point opposite HES LL 32+48.19 on said LL Line Survey, thence northeasterly, to a point opposite HES LL 32+97.25 on said LL Line Survey and 154.44 feet southwesterly therefrom; thence Southeasterly, to a point opposite HES LL 33+09.28 on said LL Line Survey and 155.33 feet southwesterly, therefrom; thence southerly, to a point opposite HES LL 33+10.66 on said LL Line Survey and 161.53 feet southwesterly therefrom; thence southeasterly, to a point opposite HES LL 34+35.22 on said LL Line Survey and 173.75 feet southwesterly therefrom, thence southwesterly, to a point opposite HES LL 34+37.43 on said LL Line Survey and 182.01 feet southwesterly therefrom; thence southeasterly, to a point opposite HES LL 35+05.01 on said LL Line Survey and 187.98 feet southwesterly, therefrom; thence southwesterly to a point opposite HES LL 35+07.01 on said LL Line Survey and 196.20 feet southwesterly therefrom; thence southeasterly to a point opposite HES LL 35+47.81 on said LL Line Survey and 199.57 feet southwesterly therefrom; thence northeasterly to a point opposite HES LL 35+54.63 on said LL Line Survey and 184.43 feet southwesterly therefrom; thence southeasterly, to a point opposite HES LL 36+42.32 on said LL Line Survey and 193.13 feet southwesterly therefrom; thence southwesterly, to the point of beginning.

EXHIBIT B to Active Recreation Areas

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PARCEL "B" (Atlantic Street Park)

That portion of Lots 6,9,10 and 11, Block 10, Valentine Addition to the City of Seattle, according to the plat recorded in Volume 7 of plats, page 71 records of said county described as follows:

Beginning at a point on the westerly right of way line of 21st Ave. S. that is opposite Highway Engineer's Station (hereinafter referred to as HES) LL 62+26.34 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island; Sec. 1, Jct. SR 5 to Bradner Place S. and 378.90 feet southerly therefrom; thence southerly, along said westerly right of way line, to a point opposite HES Rainier 11+99.99 on the Rec. Rainier Ave. S. Line Survey of said project; thence westerly, to a point opposite HES Rainier 12+46.58 on said Rec. Rainier Ave. S. Line Survey and 161.00 feet northeasterly therefrom; thence northwesterly, to a point opposite HES LL 61+20.90 on said LL Line Survey and 475.56 feet southerly therefrom; thence northeasterly along a 56 foot radius curve to the left, being concave to the northwest, having a chord bearing N 43°49'39" E, an arc distance of 29.64 feet; thence N 28°39'56" E 59.80 feet to a point of curve; thence northeasterly along a 44.00 foot radius curve to the right, being concave to the southeast, having a chord bearing N 59°47'24" E, an arc distance of 47.80 feet; thence S 80°51'12" E 20.74 feet to the point of beginning.

PARCEL "C" (Proposed Tennis Courts)

That portion of Government Lot 1 in Section 4, Township 24 North, Range 4 East W.M., and a portion of Tract C and of Block 3 of Seattle Homestead Association, First Addition to Seattle, according to the plat recorded in Volume 1 of plats, page 129, records of said county and portion of Twenty Second Ave. S. described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) LL 64+58.92 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island; Sec. 1, Jct. SR 5 to Bradner Place S. and 442.12 feet northerly therefrom; thence easterly, to a point opposite HES LL 65+78.89 on said LL Line Survey and 444.82 feet northerly therefrom; thence southerly, to a point opposite said HES LL 65+81.59 and 324.85 feet northerly therefrom; thence westerly, to a point opposite HES LL 64+61.62 on said LL Line Survey and 322.15 feet northerly therefrom; thence northerly, to the point of beginning.

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PARCEL "D" (Existing and Proposed Basketball Courts)

That portion of Block 3 and the alley within said Block, Seattle Homestead Association, First Addition to Seattle, according to the plat recorded in Volume 1 of plats, page 129, records of said county described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) LL 66+76.30 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S. and 408.40 feet northerly therefrom; thence southeasterly, to a point opposite HES LL 67+55.27 on said LL Line Survey and 392.54 feet northerly therefrom; thence southwesterly, to a point opposite HES LL 67+47.50 on said LL Line Survey and 348.20 feet northerly therefrom; thence southeasterly, to a point opposite HES LL 68+26.30 on said LL Line Survey and 334.40 feet northerly therefrom; thence southwesterly, to a point opposite HES LL 68+07.60 on said LL Line Survey and 227.30 feet northerly therefrom; thence northwesterly, to a point opposite HES LL 67+28.80 on said LL Line Survey and 241.00 feet northerly therefrom; thence northeasterly, to a point opposite HES LL 67+36.52 on said LL Line Survey and 285.37 feet northerly therefrom; thence northwesterly, to a point opposite HES LL 66+54.88 on said LL Line Survey and 301.75 feet northerly therefrom; thence northeasterly, to the point of beginning.

PARCEL "E" (Tract 37 Screening Fence)

A portion of the alley lying within Block 1, Bradner's Addition to the City of Seattle, according to the plat recorded in Volume 5 of plats, page 49, records of said county described as follows:

Beginning at the intersection of the south line of Lot 11, Block 1 of said Bradner's Addition with a line drawn parallel with the Rel. Empire Way S. Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island and 40 feet easterly therefrom; thence easterly, to the southeast corner of Lot 22, Block 1 of said Bradner's Addition, thence south 2 feet; thence west, parallel with the south line of said Block 1, to intersect said line drawn 40 feet easterly of and parallel with the Rel. Empire Way S. Line Survey; thence north, along said parallel line, 2 feet to the point of beginning.

PARCEL "F" (Sportsfield)

Portion of Block 5, Seattle Homestead Association, First Addition to Seattle, according to the plat thereof recorded in Volume 1 of plats, page 129, records of said county; and

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portion of Block 4, Monroe's First Addition to the City of Seattle, according to the plat thereof recorded in Volume 3, of plats, page 73, records of said county; and portion of South Atlantic Street; and portion of the SR 90 Highway right of way as it existed prior to February 29, 1980, all lying within a tract described as follows:

Beginning at a point on the south right of way line of South Atlantic St. that is opposite Highway Engineer's Station (hereinafter referred to as HES) LL 74+69.18 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S; thence westerly, to a point opposite HES LL 71+87.59 on said LL Line Survey and 403.8 feet southerly therefrom; thence northerly, to a point opposite HES LL 71+91.56 on said LL Line Survey and 329.55 feet southerly therefrom; thence westerly, to a point opposite HES LL 70+80.22 on said LL Line Survey and 326.23 feet southerly therefrom; thence northerly, to a point opposite HES LL 70+85.77 on said LL Line Survey and 137.34 feet southerly therefrom; thence easterly, to a point opposite HES LL 74+68.67 on said LL Line Survey and 136.62 feet southerly therefrom; thence southerly, to the point of beginning.

**PARCEL "G" (Urban Peace Circle)**

Portion of the SR 90 highway right of way as it existed prior to February 29, 1980 within Government Lot 4 of Section 4, Township 24 North, Range 4 East, W.M. lying within a 43.10 foot radius circle the radial center of which is located at a point opposite Highway Engineer's Station LL 82+38.94 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S. and 267.88 feet southerly therefrom.

**PARCEL "H" (Existing Tennis Courts)**

Portion of the south half of the southeast quarter of Section 4, Township 24 North, Range 4 East, W.M. within the SR 90 highway right of way as it existed prior to July 6, 1979 lying within a tract described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) LL 84+30.18 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S. and 101.98 feet southerly therefrom; thence easterly, to a point opposite HES LL 84+71.38 on said LL Line Survey and 101.69 feet southerly therefrom; thence northerly, to a point opposite HES LL 84+71.30 on said LL Line Survey and 89.89 feet southerly therefrom; thence easterly, to a point opposite HES LL 85+50.37 on the LL Line Survey of SR 90, Jct. SR 5 to W.

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Shore Mercer Island: Sec. 2, Bradner Place S. to W. Shore Mercer Island and 89.33 feet southerly therefrom; thence southerly, to a point opposite HES LL 85+50.45 on said LL Line Survey and 101.13 feet southerly therefrom; thence easterly, to a point opposite HES LL 86+31.16 on said LL Line Survey and 100.56 feet southerly therefrom; thence southerly, to a point opposite HES LL 86+31.23 on said LL Line Survey and 110.56 feet southerly therefrom; thence westerly, to a point opposite HES LL 85+41.23 on said LL Line Survey and 111.20 feet southerly therefrom; thence southerly to a point opposite HES LL 85+42.06 on said LL Line Survey and 222.15 feet southerly therefrom; thence westerly, to a point opposite HES LL 84+31.19 on the LL Line Survey of said SR 90, Sec. 1 and 223.06 feet southerly therefrom; thence northerly, to the point of beginning.

**PARCEL "I" (Children's Play Area)**

Portion of the Southeast Quarter of the Southeast Quarter of Section 4, Township 24 North, Range 4 East, W.M. within the SR 90 right of way as it existed prior to July 6, 1979, lying within a tract described as follows:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) LL 86+48.95 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 2, Bradner Place S. to W. Shore Mercer Island and 135.75 feet southerly therefrom; thence easterly, to a point opposite HES LL 86+86.85 on said LL Line Survey and 135.75 feet southerly therefrom; thence northerly, to a point opposite said HES LL 86+86.85 and 105.75 feet southerly therefrom; thence easterly to a point opposite HES LL 87+67.75 on said LL Line Survey and 105.75 feet southerly therefrom; thence southerly, to a point opposite said HES LL 87+67.75 and 204.35 feet southerly therefrom; thence westerly, to a point opposite HES LL 86+74.46 on said LL Line Survey and 204.35 feet southerly therefrom; thence northwesterly along a 105.00 foot radius curve to the right, being concave to the northeast, chord bearing N 18°32'58" W, an arc distance of 74.76 feet to the point of beginning.

**PARCEL "J" (East Portal Mt. Baker Ridge Viewpoint)**

Portions of Blocks 59 & 60 and of Lake Washington Blvd. s. formerly Washington Ave. and of S. Day St. formerly Walnut St. westerly thereof, Burke's Second Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of plats, page 248, records of said county, lying within a tract described as follows:

Beginning at a point on the south right of way line of S. Irving St. that is opposite Highway Engineer's Station (hereinafter referred to as HES) LL 103+26.41 on the LL Line Survey of SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 2, Bradner Place S. to W. Shore Mercer Island; thence westerly along said south right of way line to a point opposite HES LL 102+43.68 on said LL Line Survey; thence southerly, to a point opposite HES LL 102+42.17 on said LL Line Survey and 79.03 feet northerly therefrom; thence N 87°45'11" W. 12.00 feet; thence S 02°23'23" W 12.05 feet; thence S 20°49'29" W. 25.30 feet; thence S 02°23'23" W 70.50 feet; thence S 16°02'43" E 14.18 feet; thence easterly to a point opposite HES LL 102+41.03 on said LL Line Survey and 40.96 feet southerly therefrom; thence southerly, to a point opposite HES LL 102+38.57 on said LL Line Survey and 300.95 feet southerly therefrom, said point being the northwest corner of Lot 3, Block 60, of said Burke's Second Addition; thence S 87°36'37" E, along the north line of said Lot 3, a distance of 29.17 feet; thence N 02°23'23" E 301.24 feet; thence N 01°56'59" E 22.72 feet; thence S 88° 24' 10" E 8.20 feet; thence along a 39.25 foot radius curve to the left, concave to the northwest, with a chord bearing N 66°44'44" E, an arc distance of 34.40 feet; thence along a 56.25 foot radius curve to the left, concave to the northwest, with a chord bearing N 17°19'24" E, an arc distance of 47.75 feet; thence S 81°55'39" W 0.27 feet; thence N 00°58'24" W 8.58 feet; thence N 05°38'22" W 30.66 feet; thence N 06°12'58" W 21.65 feet; thence N 03°12'01" W 10.28 feet; thence N 05°44'55" E 9.41 feet; thence N 10°38'27" E 6.40 feet; thence N 18°31'16" W 6.04 feet; thence N 26°11'14" W 7.47 feet; thence N 20°57'56" W 10.89 feet; thence N 05°45'09" W 11.44 feet; thence N 12°06'04" E 12.48 feet; thence N 30°43'57" E 15.14 feet; thence N 51°42'58" E 15.61 feet; thence N 48°28'06" E 2.67 feet, to the point of beginning.

The lands herein described contain the following areas: Parcel "A" 32,230 square feet, more or less, Parcel "B" 8,050 square feet, more or less, Parcel "C" 14,400 square feet, more or less, Parcel "D" 17,610 square feet, more or less, Parcel "E" 560 square feet, more or less, Parcel "F" 94,710 square feet, more or less, Parcel "G" 5,835 square feet, more or less, Parcel "H" 15,260 square feet, more or less, Parcel "I" 10,025 square feet, more or less and Parcel "J" 26,940 square feet, more or less, the specific details concerning all of which may be found on sheets 3, 5, 6, 7, 8 & 9 of that certain right of way plan entitled SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 1, Jct. SR 5 to Bradner Place S. and sheets 3 and 4 of that certain right of way plan entitled SR 90, Jct. SR 5 to W. Shore Mercer Island: Sec. 2, Bradner Place S. to W. Shore Mercer Island, now of record and on file in the Office of the Secretary of Transportation at Olympia, Washington, bearing dates of approval February 29, 1980 and July 6, 1979 respectively.

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## LEVEL OF CARE

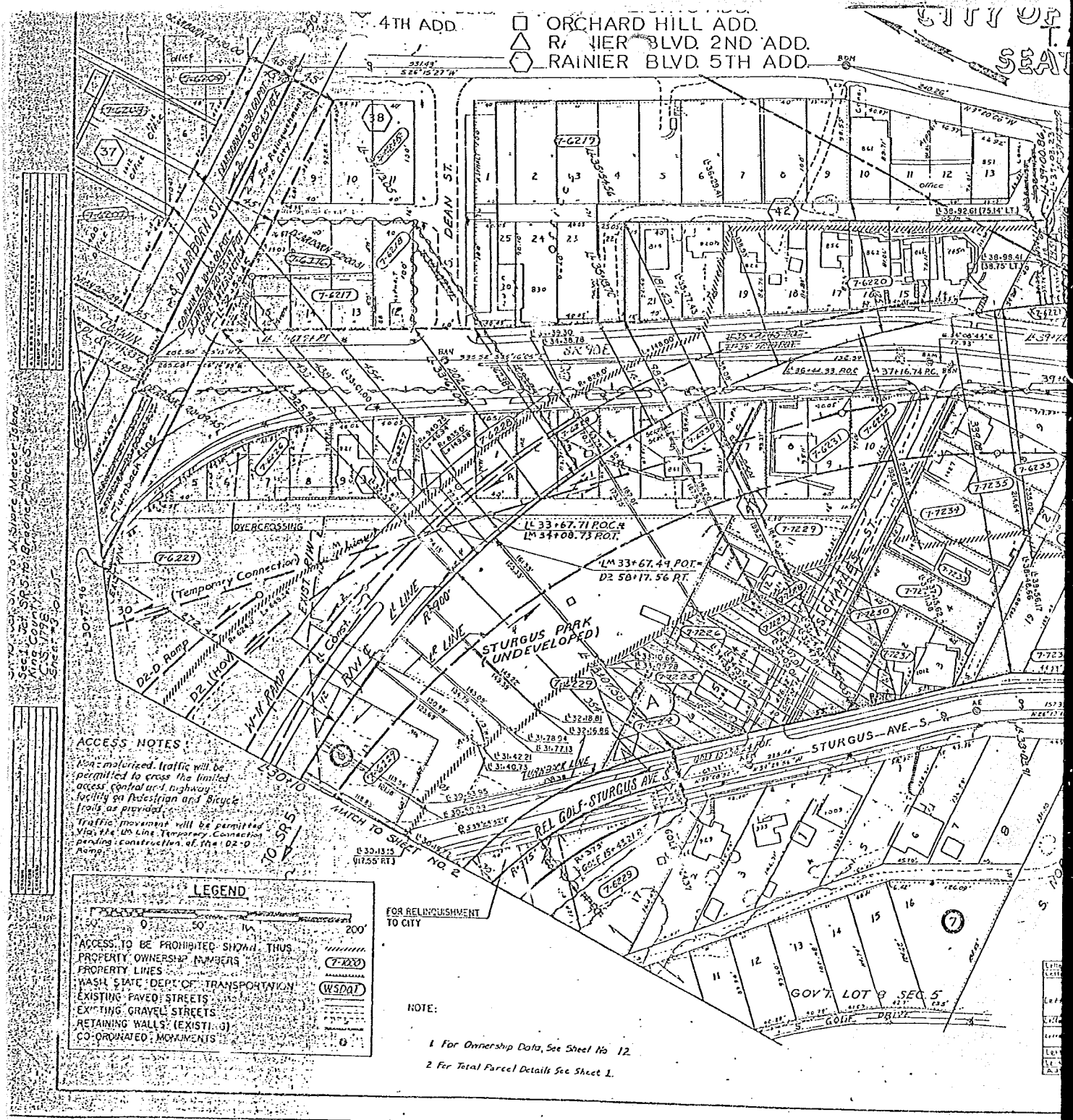
		NATIVE	LOW	MEDIUM	HIGH
GRASS HEIGHT:	Turf			2-3" 15 Mow/Year	1.5-2" 30 Mow/Year
	Rough	Unknown Meadow	6-9" 4 Mow/Year	3-5" 8 Mow/Year	
EDGE DEFINITION:		None	None	Chemically	Chemically & Mechanically Clean, Sharp, Defined Boundary
PLANT CARE:	Pruning	None	None	Perimeter	Shearing & Shaping
	Fertilization	None	25% per year	50% per year	100% per year
	Irrigation	None	None	Cont. Operation 2nd Priority	Cont. Operation 1st Priority
PLANT REPLACEMENT:		None	None	As Time Allows	Immediate
DANGER TREES:		Immediate Removal of Danger Trees			
WEED CONTROL:		Noxious Only	Noxious & Invasive	Seasonal	Weed-Free Appearance
NOXIOUS WEEDS:		NO NOXIOUS WEEDS			
MULCH:		None	None	None	15% Per Year
DISEASE/PEST CONTROL:		None	Plant Survival	Plant Survival	Appearance
VANDALISM/LOSS (Except Plants):		None	Limited	Repair/Replacement/Cleaning	
LITTER CONTROL:		Annual	Annual	4 Times Per Year	20 Times Per Year
PAVED AREAS (Including Trails and Active Recreation Surfaces):		Safe, Clean, Smooth, Litter Free, Snow & Ice Removed, Patch, Seal As Required			

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Exhibit "C"

AIRSPACE LEASE

ACTIVE RECREATION AREAS



4TH ADD. □ ORCHARD HILL ADD.  
△ RAINIER BLVD. 2ND ADD.  
○ RAINIER BLVD. 5TH ADD.

CITY OF  
SEATTLE

**ACCESS NOTES:**  
Non-motorized traffic will be permitted to cross the limited access controlled highway facility on pedestrian and bicycle trails as provided.  
Traffic movement will be permitted via the US Line Temporary Connection pending construction of the D2-D Ramp.

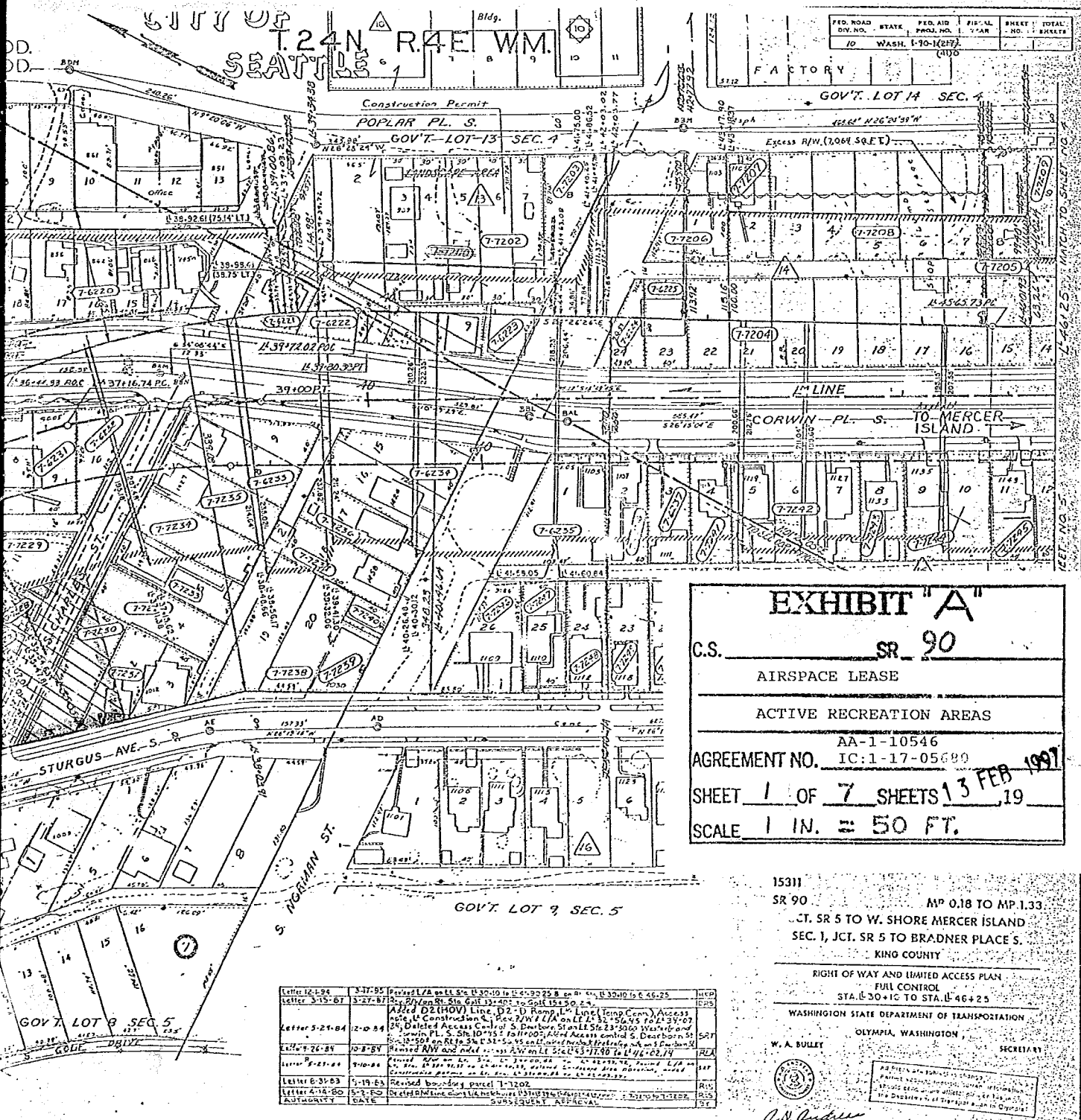
**LEGEND**  
ACCESS TO BE PROHIBITED SHOWN THUS  
PROPERTY OWNERSHIP NUMBERS  
PROPERTY LINES  
WASH. STATE DEPT. OF TRANSPORTATION  
EXISTING PAVED STREETS  
EXISTING GRAVEL STREETS  
RETAINING WALLS (EXISTING)  
COORDINATED MONUMENTS

FOR RELINQUISHMENT  
TO CITY

NOTE:

- 1 For Ownership Data, See Sheet No. 12.
- 2 For Total Parcel Details See Sheet 1.





**EXHIBIT "A"**

C.S. SR 90

AIRSPACE LEASE

ACTIVE RECREATION AREAS

AA-1-10546

AGREEMENT NO. IC:1-17-05680

SHEET 1 OF 7 SHEETS 13 FEB 1997

SCALE 1 IN. = 50 FT.

15311  
SR 90  
MP 0.18 TO MP 1.33  
JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 1, JCT. SR 5 TO BRADNER PLACE S.  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
STA. 1-30+10 TO STA. 1-46+25

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
OLYMPIA, WASHINGTON

W. A. BULLY  
DESIGN ENGINEER

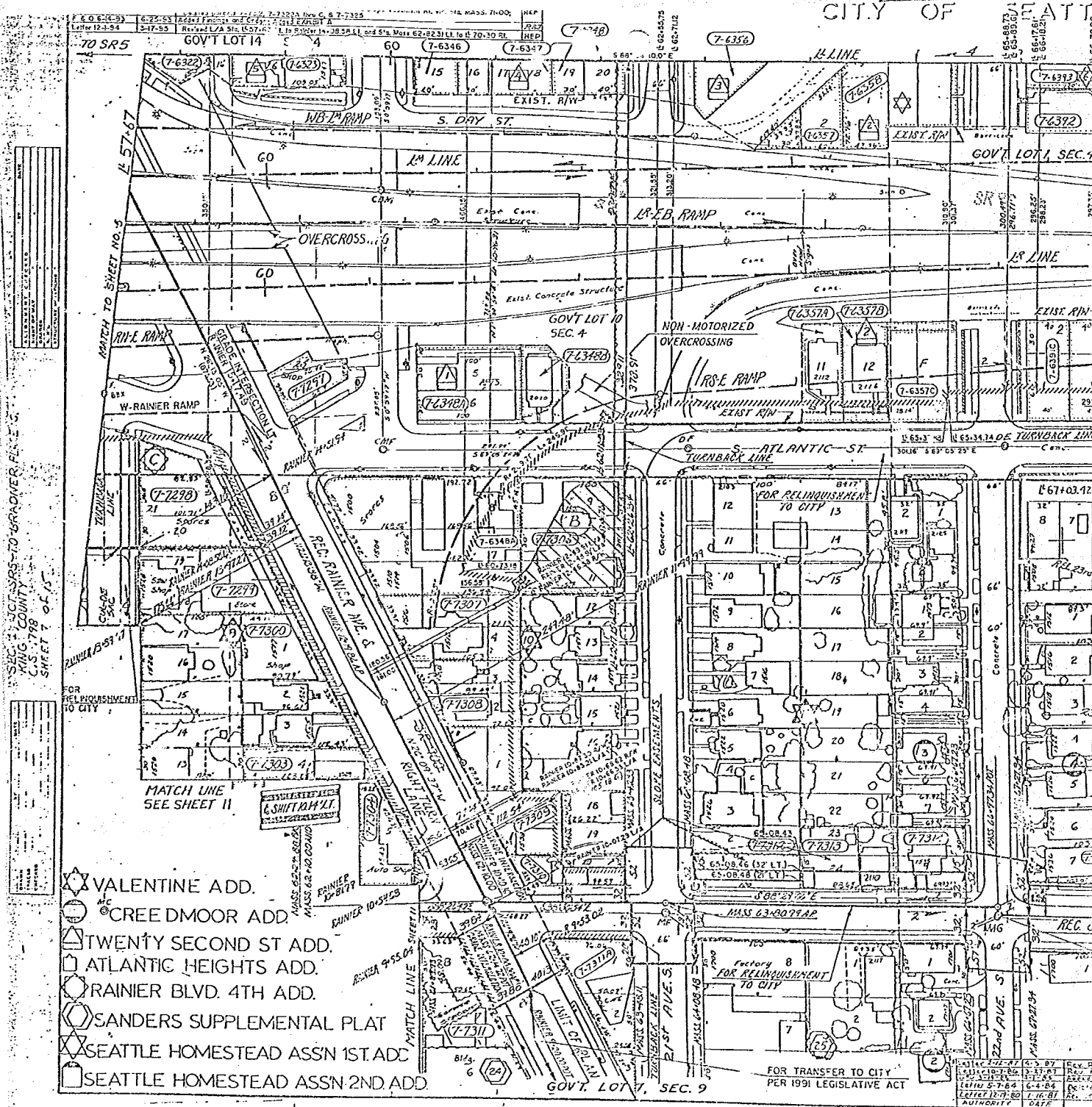
SECRETARY

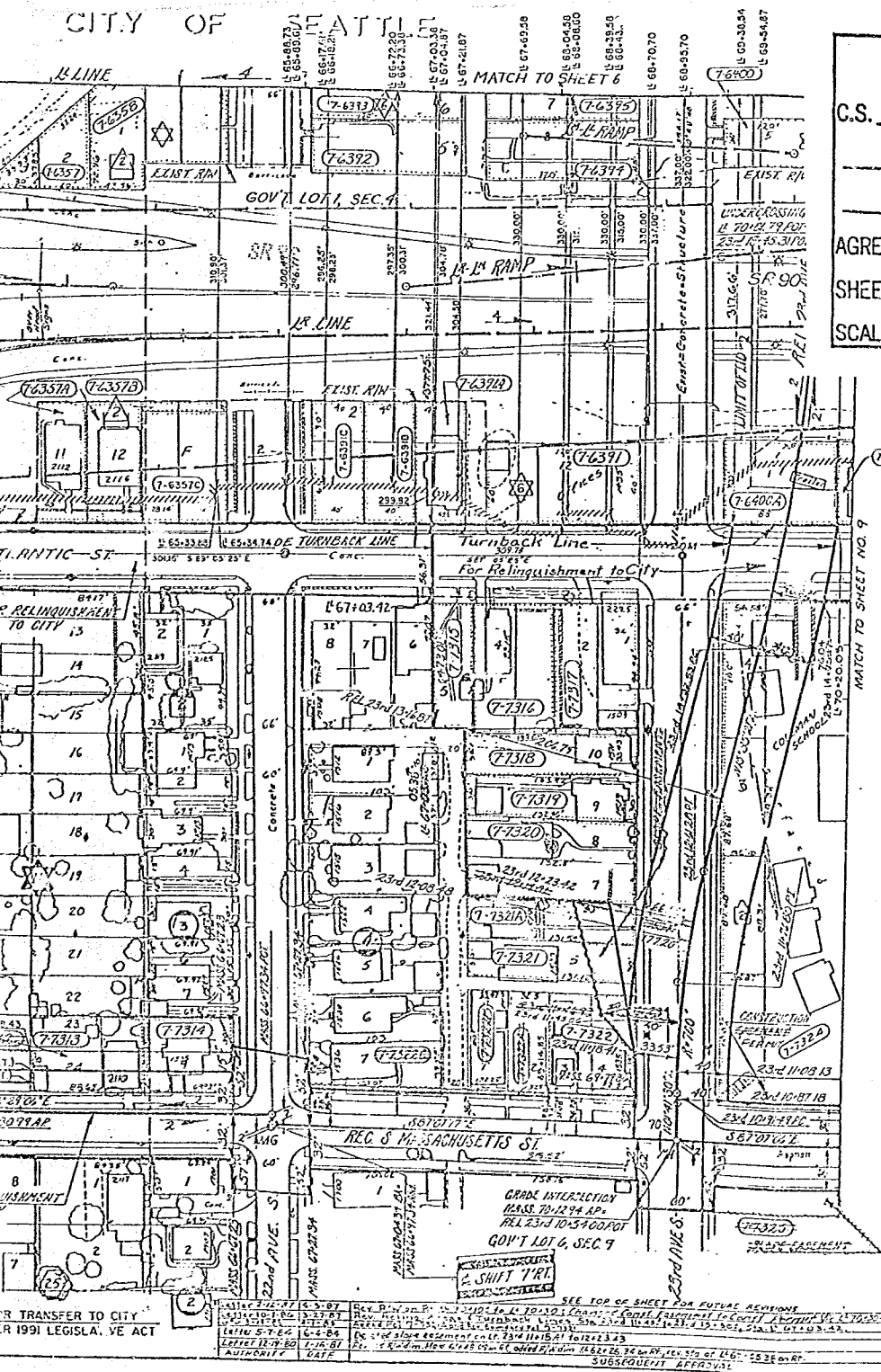
DATE FEB. 29, 1980  
SHEET 3 OF 15 SHEETS

Designated for Limited Access Control By Comm. Res. No 95, July 23, 1953

IT IS DUE TO THE QUALITY OF THE DOCUMENT.

7367. A T T





**EXHIBIT "A"**

C.S. SR 90

AIRSPACE LEASE

ACTIVE RECREATION AREAS

AA-1-10546

AGREEMENT NO. IC:1-17-05680

SHEET 2 OF 7 SHEETS 13 FEB 1991

SCALE 1 IN. = 50 FT.

OBJECT	STATION ON ROADWAY	TYPE
RAILROAD	9+48 LK	DR

\* This approach shall not exceed 30 feet in width and shall be limited to right turn ingress and egress only.

NOTE: 1. For Ownership Data, See Sheet No. 13  
2. For Total parcel details, See sheet 1

REVISION DATED JUNE 25, 1992 TENTATIVELY  
APPROVED BY THE STATE DESIGN ENGINEER

**EXHIBIT A**  
REVISION DATED JUNE 25, 1992 ADOPTED  
BY ASSISTANT SECRETARY FOR PROGRAM  
DEVELOPMENT FINDINGS AND ORDER  
DATED JUNE 14, 1993

**LEGEND**

50 0 50 100 200

SS TO BE PROHIBITED SHOWN, THUS

PROPERTY OWNERSHIP, NUMBERS (T-220)

PROPERTY LINES (T-220)

WASH STATE DEPT. OF TRANSPORTATION (W-522)

EXISTING PAVED STREETS

EXISTING GRAVEL STREETS

RETAINING WALLS (EXISTING)

CO-ORDINATED MONUMENTS

This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 9, 1971, as revised by the Board of Review Findings on 1 Order issued March 26, 1973, and to provisions of the Memorandum Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Department of Transportation.

15311

SR 90

MP 0.18 TO MP 1.3

JCT. SR 5 TO W. SHORE MERCER ISLAND

S.C. 1, JCT. SR 5 TO BRADNER PLACE

KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN

FULL CONTROL

STA. 67+67 TO STA. 70+30

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

OLYMPIA, WASHINGTON

W. A. BULLY

SECRETARY

**DESIGN ENGINEER**

DATE FEB. 25, 1990

By Comm. Reg. No. 55, July 23, 1983

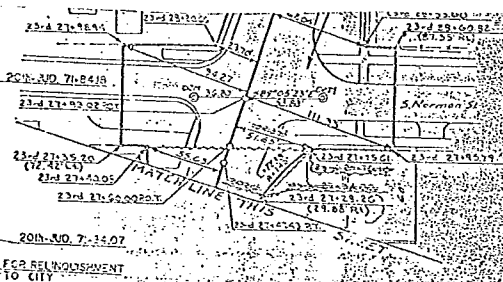
SHEET 2 OF 15 SHEETS



[illegible]

*Designated for Limited Access Control By Comm. Res. No. 95, July 23, 1953*

SCALE 1 IN. = 50 FT.



0 50' 100' 200'

ACCESS TO BE PROHIBITED; THUS  
PROPERTY OWNERSHIP NUMBERS  
PROPERTY LINES

WASH STATE DEPT. OF TRANSPORTATION

EXISTING PAVED STREETS  
EXISTING GRAVEL STREETS  
RETAINING WALLS (EXISTING)  
CO-ORDINATED MONUMENT

0

This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 3, 1971, as revised by the Board of Review Findings and Order issued March 26, 1973, and to provisions of the Memorandum Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue, the Municipality of Metropolitan Seattle, King County and the Washington State Department of Transportation.

JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 1, JCT. SR 5 TO BRADNER PLACE S.  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS MAIN  
FULL CONTROL  
STA. 57+67 TO STA. 70+52

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
OLYMPIA, WASHINGTON

*A. N. Andrews*  
DESIGN ENGINEER

DATE: FEB. 23 1980

SECRET 6 04

0-2

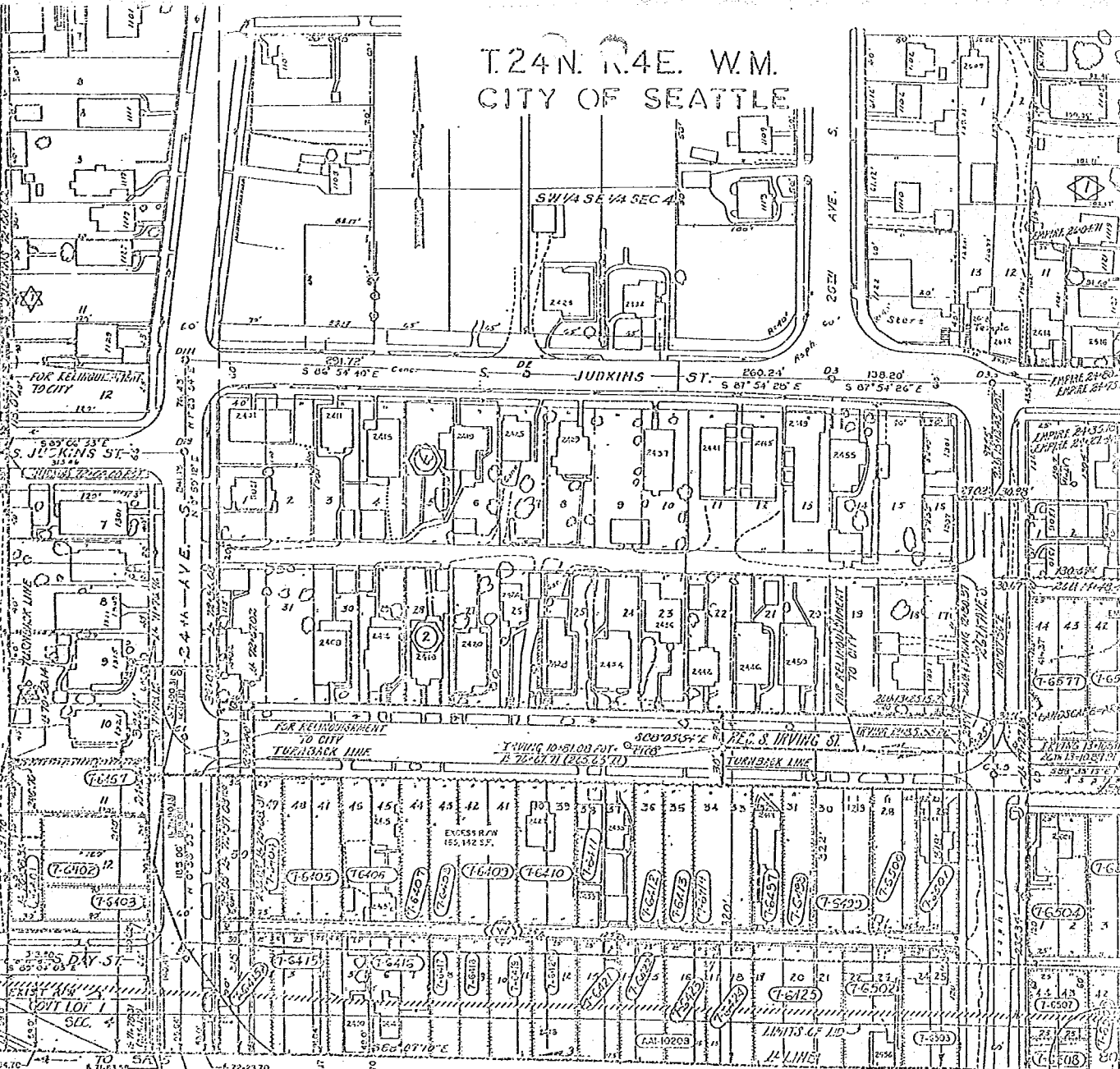


T.24N. R.4E. W.M.  
CITY OF SEATTLE

NO.	DATE	DESCRIPTION
1		
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12		

Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

NO.	DATE	DESCRIPTION
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- CABLE LINE ADD.
- ⓑ BEMIS ADD.
- ⓓ BRADNER'S ADD.
- Ⓦ WHEELER'S 3RD ADD.
- ★ SEATTLE HOMESTEAD ASSN. 1ST ADD.

1st-12-12-54	3-17-95	Per R/W and cased across R/W with Sec. 6, 7, 10, 31 to Sec. 6, 13, 17, 24, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	1st
1st-12-12-54	3-17-95	Per R/W and cased across R/W with Sec. 6, 7, 10, 31 to Sec. 6, 13, 17, 24, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	1st
1st-12-12-54	3-17-95	Per R/W and cased across R/W with Sec. 6, 7, 10, 31 to Sec. 6, 13, 17, 24, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	1st
1st-12-12-54	3-17-95	Per R/W and cased across R/W with Sec. 6, 7, 10, 31 to Sec. 6, 13, 17, 24, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	1st

FED. ROAD DIV. NO.	STATE	FED. AID FUND. NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
10	WASH.	1-90-1(100)			

# EXHIBIT "A"

C.S. SR 90

AIRSPACE LEASE

ACTIVE RECREATION AREAS

AA-1-10546

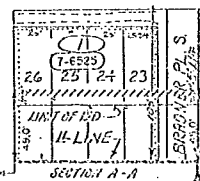
AGREEMENT NO. IC:1-17-05680

SHEET 4 OF 7 SHEETS 13 FEB 1997

SCALE 1 IN. = 50 FT.



For R/W & L/A ahead see SR90, Jct. SR 5 to West Shore Mercer Island, Sec. 2, Bradner Place S. to West Shore Mercer Island, dated July 2, 1979.



END OF PLAN  
Sta. 1+85+08.93  
MP 1.33

MP 0.18 to MP 1.33

JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 1, JCT. SR 5 TO BRADNER PLACE S.  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN

FULL CONTROL

STA. 1+70+32 TO STA. 1+93+03.93

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

OLYMPIA, WASHINGTON

W. A. FOUST

SECRETARY



A. D. Anderson  
DESIGN ENGINEER

DATE FEB. 29, 1990

SHEET 4 OF 7 SHEETS

This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 3, 1971, as revised by the Board of Review Findings and Order issued March 26, 1973, and to provisions of the Memorandum Agreement approved December 21, 1976 between the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Department of Transportation.

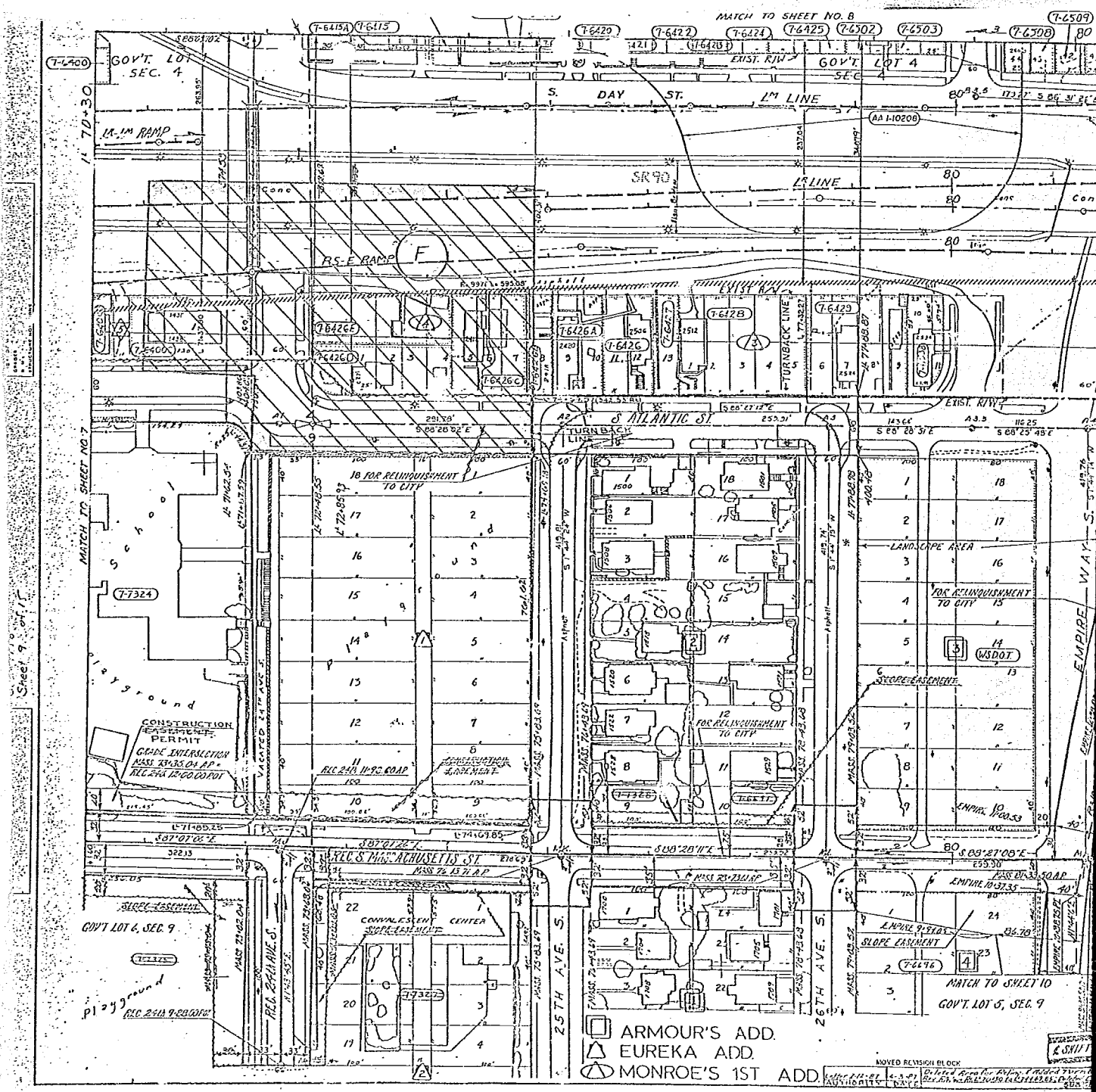
Designation of Limited Access Control By Comm. Res. No. 75, July 23, 1953

D-7

R/W

SR 90/442

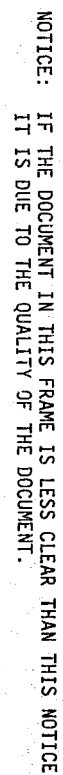
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



- ARMOUR'S ADD.
- △ EUREKA ADD.
- △ MONROE'S 1ST ADD.

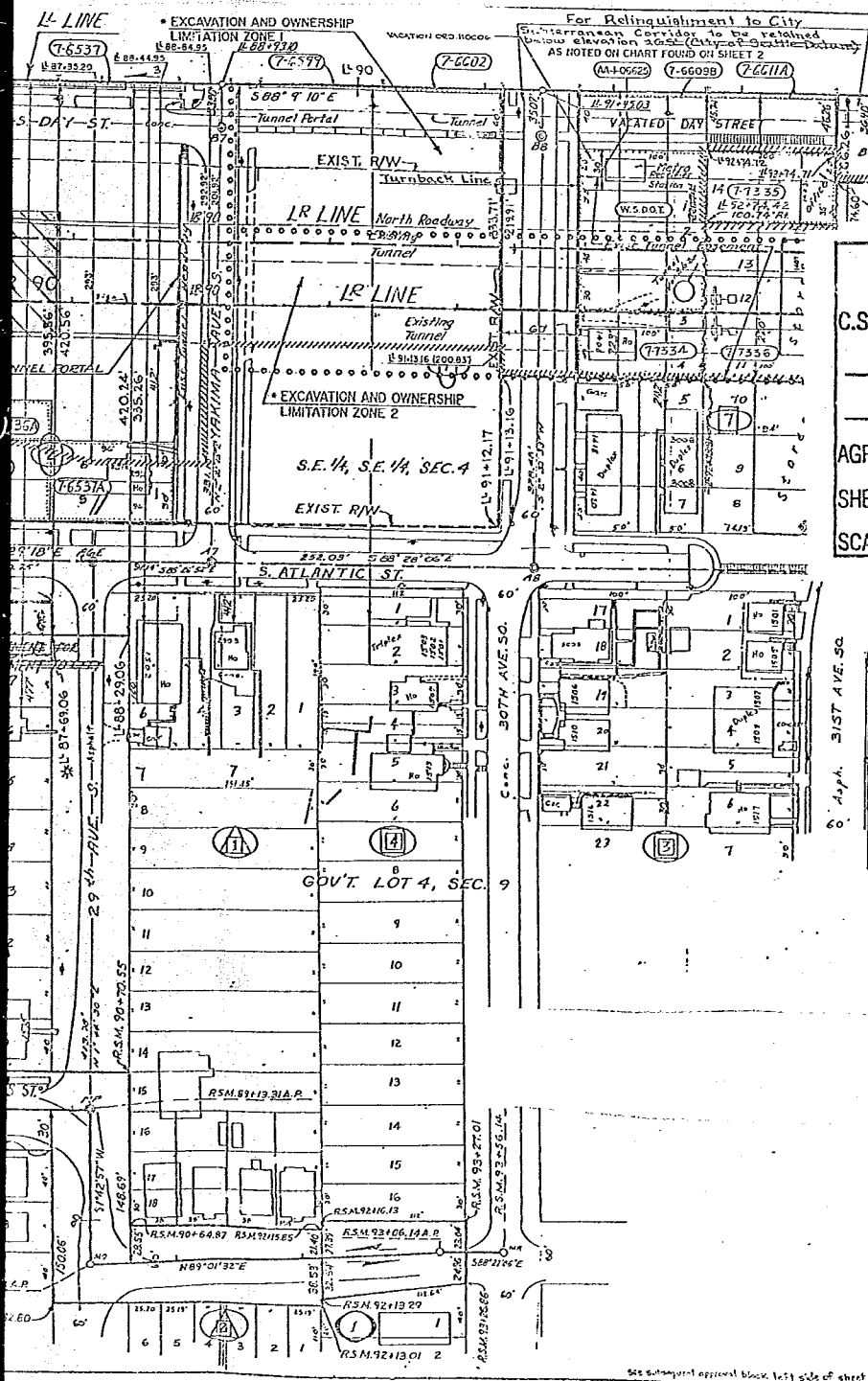
MOVED REVISION BLOCK  
 2-5-11  
 2-5-11





NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE  
IT IS DUE TO THE QUALITY OF THE DOCUMENT.





FED. ROAD DIST. NO.	STATE	FED. AID PROJ. NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
10	WASH.	1-10-1035			

T.24 N. R.4 E. W.M.

CITY OF SEATTLE

## EXHIBIT "A"

C.S. SR 90

AIRSPACE LEASE

ACTIVE RECREATION AREAS

AA-1-10546

AGREEMENT NO. IC:1-17-05680

SHEET 6 OF 7 SHEETS 13 FEB 1997, 19

SCALE 1 IN. = 50 FT.

### LEGEND

- 50' 0' 50' 100' Scale in feet
- ACCESS TO BE PROHIBITED SHOWN THUS
- PROPERTY OWNERSHIP NUMBERS
- PROPERTY LINES
- STATE OWNED - DEPT. OF TRANSPORTATION
- EXISTING PAVED STREETS
- EXISTING GRAVEL STREETS
- RETAINING WALLS (EXISTING)
- CO-ORDINATED MONUMENTS

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311

SR 90

MP 1.33 TO MP 3.25

JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 2, BRADNER PLACE S. TO  
W. SHORE MERCER ISLAND

KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
STA. L 85+08.93 TO STA. L 94+05

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

OLYMPIA, WASHINGTON

W. A. BULLY

SECRETARY



D. D. Anderson  
DESIGN ENGINEER

DATE July 6, 1979

52401 3 OF 139 SHEETS

Designated For Limited Access Control By Comm. Res. No. 99, July 23, 1963

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



N. R.4E. W.M.  
SEATTLE



FED. ROAD DIST. NO.	STATE	FED. AID PROJ. NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
10	WASH.	1-40-10533			

ROADWAY	PT. OF BEGINNING	PT. OF END	LENGTH	AREA	VOLUME
SR 90	104+56.52	110+00.00	14000'	137.86'	275.70'

ACCESS NOTES:

Non-motorized traffic will be permitted to cross the limited access control line on pedestrian and bicycle trails as provided.

Traffic movement will be permitted over the highway structures at: 31st Ave. So.  
32nd Ave. So.

**EXHIBIT "A"**

C.S. SR 90

AIRSPACE LEASE

ACTIVE RECREATION AREAS

AGREEMENT NO. AA-1-10546  
IC-1-17-05680

13 FEB 1997

SHEET 7 OF 7 SHEETS, 19

SCALE 1 IN. = 50 FT.

**LEGEND**

50' 0' 50' 100' 200'

Scale in Feet

ACCESS TO BE PROHIBITED SHOWN THUS

PROPERTY OWNERSHIP NUMBERS

PROPERTY LINES

STATE OWNED - DEPT. OF TRANSPORTATION

EXISTING PAVED STREETS

EXISTING GRAVEL STREETS

RETAINING WALLS (EXISTING)

CO-ORDINATED MONUMENTS

This plan conforms to the access provisions in the Findings and Order Issued by the Highway Commission on November 3, 1971, as revised by the Board of Review Findings and Order Issued March 26, 1973, and to provisions of the Memorandum Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Department of Transportation.

15311  
SR 90 MP 1.33 TO MP 3.25  
JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 2, BRADNER PLACE S. TO  
W. SHORE MERCER ISLAND  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
STA. L+ 94+05 TO STA. L+105+50  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

OLYMPIA, WASHINGTON

W. A. EULLEY

SECRETARY



A. D. Anderson  
DESIGN ENGINEER

DATE July 6, 1979

SHEET 4 OF 4 SHEETS

Designated For Limited Access Control By Comm. Res. No. 95, July 23, 1953

Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85
Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85
Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85
Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85
Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85
Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85
Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85
Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85
Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85
Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85	Letter 10-1-84	3-24-85

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

002556

GM1319

DAY STREET WATERFRONT AREA

AA-1-10543  
IC:1-17-05679

AIRSPACE LEASE

THIS IS A LEASE entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, hereinafter called "WSDOT," and THE CITY OF SEATTLE, hereinafter called the "Lessee".

WHEREAS, the land and premises hereinafter described to be leased to the Lessee are not presently needed exclusively for highway purposes; AND WHEREAS, the WSDOT is granted authority to lease property under RCW 47.12.120; AND WHEREAS, the WSDOT and Lessee deem it to be in the best public interest to enter into this lease; AND WHEREAS, Lessee acknowledges that WSDOT would not have entered into this Lease and agreed to allow the Lessee to develop the Premises for a public boat launch and dock and other related uses except for Lessee's promise to maintain the leased premises at Lessee's expense;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances described herein, IT IS MUTUALLY AGREED THAT:

1. PREMISES. The WSDOT does hereby lease to the Lessee and the Lessee does hereby lease from WSDOT the following areas collectively comprising approximately 3.96 Acres:

- a. Upland portion of WSDOT right of way approximately 1.80 acres in area; and
- b. Underwater portion of WSDOT right of way to Inner Harbor Line approximately 2.16 acres.

all of which are and shall be identified by blue shading on Exhibit "A," which is attached hereto and by this reference incorporated herein and are and shall be hereinafter collectively referred to as the "Premises". The Premises is legally described as follows:

Exhibit 5 to Open Space And Recreation  
Area I-90 Maintenance, Redevelopment  
And Land Conveyance Agreement

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Lots 1 through 9, Block 80 and Lot 1, Block 81, Burke's Second Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of plats, page 248; also

Lots 1 through 9, Block 60 and Lot 1, Block 61, map of Lake Washington Shore Lands; also

The Day Street right of way lying between the East right of way line of Lakeside Ave. S. and the Inner Harbor line.

Subject to an easement over the south 6 feet of said tract as set forth in instruments recorded under Auditor's File No.'s 7411150381 and 8002110691.

The lands herein described contain an area of 3.96 Acres, more or less, the specific details concerning all of which are to be found within that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia and bearing date of approval July 6, 1979.

2. **TERM.** The term of this Lease shall commence on the date it is fully executed and shall continue in full force and effect thereafter for a period of 55 years or until expiration or termination pursuant to the provisions elsewhere herein, whichever is the earlier. The Lessee shall have the option of continuing its tenancy of the Premises for additional twenty (20) year terms; Provided, that at the time the renewal is scheduled to commence, the Lessee is in substantial compliance with all the terms and conditions of this Lease.

3. **SIGNAGE.** Within ninety days after the commencement of this Lease, Lessee, at its expense, shall erect and maintain permanent signs approved by WSDOT as to quantity, location, and design, which approval shall not be withheld unreasonably, stating as follows:

"This public park is located on highway right of way under an agreement between The City of Seattle and the Washington State Department of Transportation."

4. **CONSIDERATION.** The Lessee's assumption of maintenance responsibilities for the Premises as specified herein serves as consideration for this Lease.

5. **NONAPPLICABILITY OF RELOCATION ASSISTANCE.** The Lessee acknowledges that the signing of this Lease does not entitle the Lessee to assistance under the Uniform Relocation and Real Property Acquisition Act (chapter 8.26 RCW).

6. **USE OF PREMISES.**

a. Use Authorized By WSDOT: No use other than the maintenance and operation of the Premises for a public boat launch and dock and other similar uses shall be permitted without the

prior written approval of the WSDOT. In using the Premises, the Lessee shall comply with all policies and regulations heretofore or hereafter promulgated by WSDOT relative to the safety of the motoring public and the safety and operation of the highway facility that are transmitted, in writing, to the Lessee not less than thirty (30) days prior to the date the Lessee is obligated to comply with the same (except for emergency policies and regulations, which shall be effective immediately upon their adoption and the receipt by the Lessee of the text thereof and notice from the WSDOT of its emergency adoption of the same).

b. Compliance With Law: In using the Premises, it is expressly agreed that Lessee must comply with all applicable federal, state and local laws, ordinances, and regulations, including environmental requirements that are in force or that may hereafter be in force, and shall secure all necessary permits and licenses. Direct access to ramps or traveled lanes of limited access highways is not permitted.

c. Flammable/Hazardous Substances: Except as otherwise provided herein, the Lessee shall not store, bring or allow to be brought onto the Premises any toxic or hazardous substances as defined under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or Federal Superfund) (42 U.S.C. § 9601 et seq.), and the Washington Model Toxics Control Act (MCTA), RCW 70.105D et seq. or flammable substances, which flammable substances include but are not limited to explosives, petroleum products, paint, solvents, and resins, without the express written permission of WSDOT.

WSDOT hereby grants permission for the Lessee to bring onto the Premises and to reasonably use toxic, hazardous or flammable substances that are regularly used on Lessee's property to carry out the Lessee's own park and recreation operation and maintenance objectives and functions or are otherwise deemed by the Lessee to be necessary or appropriate to carry out the Lessee's maintenance responsibilities under this Lease. Pesticides may be used for landscape maintenance in accordance with manufacturer's directions at the Lessee's risk. Disposal of any and all toxic, hazardous, or flammable substances stored, brought on or allowed to be brought onto the Premises by the Lessee shall be done in a legal manner by Lessee.

Lessee hereby agrees to indemnify, defend and hold WSDOT harmless for any costs or liabilities associated with the removal or remediation of any hazardous, toxic or flammable substances, including gasoline or other petroleum product, that has been released or otherwise has come to be located upon the Premises by the activities of the Lessee, and any of its employees, agents, licensees, contractors, or the contractor's subcontractors. "Costs" shall include but not be limited to all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include but not be limited to the Comprehensive



Environmental Response, Comprehensive, and Liability Act, 42 U.S.C. Section 9601; the Clean Water Act, 33 U.S.C. Section 1251; the Clean Air Act, 42 U.S.C. Section 7401; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; and the Washington Model Toxics Control Act, RCW 70.105D.010

Lessee further agrees to retain any and all liabilities from the offsite disposal; handling, treatment, storage, or transportation of any toxic, hazardous or flammable substances, including petroleum products, removed from the Premises and that liabilities under this section (Flammable/Hazardous Substances) shall survive the expiration or termination of this Lease.

d. Signage, Display Lighting & Advertising: Signs, display lights, and advertising media/materials are not permitted unless completely detailed on a separate plan sheet and have received specific prior written approval by WSDOT.

e. Special Events: The Lessee may issue permits for the presentation of special events or uses on the Premises provided that WSDOT is given 10 days prior written notice describing the event and each such intended event meets the following minimum requirements and any other reasonable requirement deemed necessary by WSDOT:

(1) The event or use does not affect or impact the traveled lanes or the operation of I-90 or its ramps, and is consistent with the park-like atmosphere intended for the Premises;

(2) Ten percent (10%) of all event, use, permit or other fees collected by the Lessee for allowing the event or activity on the Premises, and ten percent (10%) of the gross receipts for any commercial, money-making event sponsored by the Lessee or any other Lessee-authorized group on the Premises shall be applied as a credit against the money that is owed to the City Lessee by the WSDOT for maintenance services under the separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, which by this reference is incorporated herein; Provided, that no payment percentage will be charged on event, use, permit or other fees that directly reimburse the Lessee for services provided by the Lessee that are directly associated with such event, use or activity (e.g. police services). The Lessee shall maintain adequate records of events, uses, fees, and gross receipts received in relation to said events or uses and shall provide said records to the WSDOT within thirty (30) days after the end of said event or use;

(3) The Lessee, in the case of a Lessee produced event, warrants that it is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the Lessee is not self-insured, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;

(4) The Lessee-authorized group, in the case of other than Lessee produced events, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;

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(5) The Lessee, in the case of a Lessee produced event, agrees to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the special event activity;

(6) The Lessee, in other than Lessee produced events, shall require the permittee to indemnify, save, hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the activities authorized by the permit;

(7) The Lessee assumes responsibility for all clean up and repair of any damage resulting from the use or event.

7. **PERSONAL PROPERTY.** WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind, stored, kept, used or maintained in or about the Premises, except for such claims or losses that are caused by WSDOT, its employees, or any of its authorized agents, contractors, or contractor's subcontractors.

8. **ENVIRONMENTAL AUDITS.** Lessee will reasonably cooperate in any environmental audits conducted by WSDOT's staff or independent third parties. WSDOT shall ensure that no environmental audit is undertaken with respect to the Premises without prior written notice to the Lessee, and shall require that in the conduct of each such audit, the Lessee's use and occupancy of the Premises not be unreasonably disturbed. Lessee will reimburse WSDOT for the cost of any audit through which Lessee-caused contamination is found. Lessee will provide WSDOT with notice of any inspections with respect to the Premises that are known to Lessee, notices of violations, and orders to clean up contamination. Lessee will permit WSDOT to participate in all settlement or abatement discussions regarding environmental contamination remediation measures that may be required of the Lessee under law or this Lease. In the event the Lessee fails to commence environmental contamination remediation measures as duly directed by a state, federal, or local regulatory agency within 90 days of the date of any notice to take such measures, the WSDOT may elect to perform such work, and Lessee covenants and agrees to reimburse WSDOT for all direct and indirect costs associated with WSDOT's work if such remediation work was a Lessee obligation under law or this Lease.

9. **WSDOT HAZARDOUS SUBSTANCE INDEMNIFICATION.** WSDOT hereby agrees to indemnify, defend and hold Lessee harmless for any costs or liabilities associated with the removal or remediation of any hazardous substances that are: (1) located upon the Premises prior to the Lessee's occupancy of the Premises or the execution of this Lease, whichever is the earlier; and (2) which come to be located on the Premises by any acts of the WSDOT, its agents, contractors, contractor's subcontractors or employees.

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10. MAINTENANCE RESPONSIBILITIES.

a. The Lessee's maintenance responsibilities with respect to the Premises shall be as follows:

(1) At a minimum, maintaining such areas at a level equal to or better than the medium level of care as identified in Exhibit B attached hereto and incorporated herein by this reference;

(2) Being responsible for ensuring that the landscaping gets sufficient water to keep the landscaping alive; and if the necessary irrigation is not provided, being responsible for the replacement of landscaping that dies or is severely damaged due to lack of water;

(3) Maintaining the drainage systems within the Premises, including the biofiltration swale;

(4) Removing any and all graffiti in the Premises; and

(5) Removing hazards to public user of the underwater portion of the Premises on an as-needed basis.

b. The WSDOT shall maintain and repair the structural components of the I-90 bridge structures, including cleaning and repainting of structural steel components thereof.

11. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT UTILITY FRANCHISES AND PERMITS. The WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain existing facilities and, for itself, to grant utility franchises and/or permits across the Premises; Provided, that WSDOT shall require every utility franchise and permit holder issued a permit or franchise after the execution date of this Lease, to provide to the Lessee's Superintendent of Parks & Recreation, except in an emergency, not less than forty-eight (48) hours prior written notice of any intent by such utility franchise or permit holder to enter upon or perform any work on the Premises, and in the event of an emergency, to provide prior notice to such official by telephone at 206-684-8022 (or other such telephone as may be designated, by Lessee by written notice to WSDOT) regarding such intended entry or work. WSDOT shall require the franchise or permit holder to accomplish such maintenance or installation in such a manner as to minimize any disruption to the Lessee. The WSDOT shall require all franchise/permit holders to restore paving, grading, landscaping and other improvements damaged by the entry, improvement or maintenance work by or for the utility franchise or permit holder to at least as good a condition as such paving, grading, landscaping and improvements were in immediately prior to the commencement of such franchisee's or permittee's improvement work.

The Lessee will not disturb markers installed by a franchise/permit holder. Prior to tilling of the soil, or the

undertaking of any other operation of the Lessee in which earth, rock, or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater, the Lessee must provide notice to all owners of underground facilities by calling 1-800-424-5555 (or other such telephone as may be subsequently designated). Furthermore, the Lessee must comply with all provisions of Ch. 19.122 RCW relating to underground facilities. Violation of this statute is subject to a possible civil penalty.

#### 12. PROTECTION OF WSDOT STRUCTURES.

a. The Lessee shall prohibit any trenching or excavation deeper than four (4) feet below existing grade on the Premises unless the WSDOT has given its prior written consent to such excavation. The trench or excavation shall be backfilled and compacted to match existing grade in a reasonable time after opening;

b. In the event the I-90 bridge structure or any appurtenance thereto is damaged by any activity authorized under this Lease and undertaken by or for the Lessee, the Lessee shall reimburse the reasonable costs and expenses incurred by the WSDOT in repairing such damage;

c. The Lessee, at its own expense, shall make whatever provisions beyond those required of the WSDOT under Section 15 hereof the City deems necessary to protect users of the Premises from any foreseeable hazards resulting from use and operation of the highway.

13. TAXES, ASSESSMENTS AND UTILITIES. The Lessee shall pay that share of all assessments imposed on or with respect to the Premises that is the Lessee's obligation under RCW 79.44.010, and also pay all taxes which may hereafter be levied or imposed upon the interest of the Lessee or by reason of this Lease. The Lessee is responsible for and agrees to pay for utilities or other services which serve the Premises.

#### 14. IMPROVEMENTS.

a. WSDOT shall not be required to make any improvements to or perform any maintenance or repairs upon any part of the Premises, except as provided herein.

b. WSDOT's Approval of Lessee's Plans for Design and Construction: The Lessee shall not be permitted to make any additional improvements to the Premises without the prior written approval of the WSDOT. The Lessee covenants that any regrading or improvements to be constructed on the Premises by the Lessee will not at any time during or after construction either damage, threaten to damage or otherwise adversely affect any part or element of the highway facility under or immediately adjacent to the Premises or the operation thereof as then developed and used. The WSDOT shall be furnished with two sets of complete plans,

details and specifications and revisions thereto for grading and all improvements proposed to be placed on the Premises by the Lessee, and no such work shall be done by the Lessee on the Premises without prior written approval of such plans by the WSDOT, which approval shall not be unreasonably withheld or delayed. All construction work by the Lessee shall be done in conformity with the plans and specifications as approved by the WSDOT. The WSDOT may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure compliance with the WSDOT-approved plans and specifications, protection of all parts and elements of the highway facility and compliance with WSDOT's construction and safety standards. The improvements shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and construction when necessary.

c. WSDOT shall construct on the Premises in the vicinity of Day Street and the Lake Washington Shoreline landscaping, a trail, a parking area, a ramp for the launching of boats by hand (rather than by the use of a motor vehicle and trailer), and entry and exit gate(s) for another active recreation area, all consistent with plans and specifications for such work that have been or are hereafter approved by the Lessee's Superintendent of Parks & Recreation. Site improvements are scheduled to be completed by October 31, 1996. Landscaping shall be deemed complete on October 31, 1997, or upon completion of a one-year plant establishment period for plants and lawn, whichever is earlier.

d. Liens: Nothing in this lease shall be deemed to make the Lessee the agent of the WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. The Lessee acknowledges that the WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the Lessee.

15. WSDOT'S RIGHT OF ENTRY AND INSPECTION. The WSDOT, for itself, its agents and contractors and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for inspection purposes, including the inspection of any excavation, construction or maintenance work being done by the Lessee. Further, the WSDOT, for itself, its agents and contractors, and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time for the purpose of maintenance, construction or reconstruction of the highway facility or any element thereof. Provided, no such entry, for the purpose of maintenance, construction or reconstruction shall occur without at least seven (7) days' prior written notice to the Lessee. In the event of an emergency only prior notice by telephone to Superintendent of Parks and Recreation at 206-684-8022 (or such other person or telephone number as may be designated by Lessee by written notice to WSDOT) shall be required.

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The WSDOT shall in no way be responsible for any incidental or consequential damages due to loss of use by Lessee caused by any such entry.

In the event of any such entry, inspection, maintenance, construction or reconstruction of the highway facility or any element thereof by the WSDOT, or any of its agents, employees, contractors, or contractor's subcontractors, WSDOT shall ensure that such entry and work is performed in such a manner as to protect public safety and minimize any disruption to the Lessee. Following the completion of such inspection, maintenance, construction or reconstruction, any paving, grading, landscaping and other improvements on the Premises damaged by such entry, inspection, construction or reconstruction work shall be restored or repaired by or for the WSDOT to at least as good a condition as such paving, grading, landscaping and other improvements were in immediately prior to the commencement of such activity.

The parties expressly agree that nothing herein precludes any WSDOT employee, agent or contractor from using the Premises as a member of the general public.

16. **INSURANCE.** Lessee warrants that it is self-insured, and agrees to provide acceptable evidence in the form of a certification of its self-insured status to WSDOT or, if the Lessee is not self-insured, secure liability insurance in the form and amount reasonably determined necessary by WSDOT; Provided, that WSDOT may reasonably adjust said coverage requirements from time to time based on risk factors and the adequacy of the stated policy limits.

17. **HOLD HARMLESS/INDEMNIFICATION.**

a. Lessee's Indemnification: Lessee, its successors or assigns, will protect, save, and hold harmless and defend the WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors on the Premises under this Lease.

b. WSDOT's Indemnification: The WSDOT shall protect, save, and hold harmless and defend the Lessee and its officers, employees, and authorized agents from all claims, actions, costs, damages, or expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of WSDOT related to activities reserved to the WSDOT, or any of its officers, agents, employees, contractors or contractor's subcontractors on the Premises under this Lease.

c. Concurrent Negligence or Actions Covered by RCW 4.24.115: If the claims or damages are caused by or result from the concurrent negligence of (i) the WSDOT, or any of its officers,

agents, employees, contractors, or contractor's subcontractors, and (ii) the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors, or involves any action covered by RCW 4.24.115, a party's indemnification obligation hereunder shall be valid and enforceable only to the extent of the negligence of such party or any of its officers, agents, employees, licensees, invitees, contractors, or the contractor's subcontractors, as appropriate.

**18. NONDISCRIMINATION.** The Lessee, for itself and its successors, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be unlawfully excluded from participation in, be unlawfully denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the Premises, that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no such unlawful discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, that such unlawful discrimination shall not be practiced against the public in their access to and use of the facility and services provided for public accommodation constructed or operated on, over, or under the right of way, and that the Lessee shall use the Premises in compliance with all other requirements imposed pursuant to Ch.49.60 RCW and 49 C.F.R. Part 21. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the WSDOT to terminate this Lease in accordance with the procedures set forth herein.

**19. DEFAULT.** Upon the material breach of this Lease by either party hereto, the other party may give to the party allegedly in breach notice specifying the nature of such breach, the period of time within which such breach must be cured, and at the option of the party giving such notice, such party's intention to declare a default and to terminate this Lease in the event such breach is not cured within the specified cure period. Neither party shall be in default unless it fails to perform an obligation required of it within the cure period, which time shall not extend more than thirty (30) days after the date of the notice of breach, except that if the nature of the obligation is such that more than thirty (30) days is required for performance or cure, then the party alleged in breach shall not be in default if such party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The non-defaulting party may in writing, at its option, extend the cure period if in the judgment of the non-breaching party, an extension is justified. After expiration of the cure period, and any extension thereof, if one or more defaults remains unremedied, this Lease shall terminate without further notice; and Provided, that if the breach is by the Lessee, WSDOT shall have the option of giving notice in writing of its intention to cure a non-emergent default or verbal notice if the default is deemed an emergency by the

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WSDOT, by itself or through use of agents or contractors. The Lessee agrees to reimburse WSDOT within thirty (30) days of the date of WSDOT's invoice for resultant direct costs WSDOT incurs in curing such default or, in the alternative, the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto in an amount equal to the cost incurred in curing the default.

20. **ASSIGNMENTS.** Neither this Lease nor any rights created by it may be assigned; Provided, that nothing herein shall prohibit the Lessee from subcontracting with one or more third parties for the performance of the maintenance work described herein, subject to the prior written approval of the WSDOT, which shall not be unreasonably withheld. Any such contract shall not relieve the Lessee of its obligation to maintain the Premises as agreed herein.

21. **BINDING CONTRACT.** This Lease shall not become binding upon the State of Washington unless and until accepted and approved for the Washington State Department of Transportation by the Secretary or his duly authorized representative.

22. **MODIFICATIONS.** This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

23. **INTERPRETATION.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

24. **INTERRUPTION, TERMINATION, AND PARTIAL TERMINATION.**

a. Interruption: In the case of a transportation need not expected to last until the end of the 55-year term, WSDOT shall have only the right to interrupt this Lease for the period of need, at the end of which WSDOT shall promptly restore the Premises to a physical condition that is equal to or better than the condition it was in immediately prior to such interruption, and promptly thereafter shall restore use of the Premises to the Lessee. During any such period of interruption, Lessee shall have no responsibility or obligation hereunder to perform any maintenance work with respect to the area of the Premises that is affected by such interruption.

b. Termination by WSDOT: WSDOT may terminate this Lease in whole or in part:

(1) Immediately if the Premises is needed for an emergency transportation purpose;

(2) On 180 days' written notice, if the Premises is



needed for a transportation need. If the transportation need, in WSDOT's determination, does not require terminating the use and occupancy rights with respect to all of the Premises, the Lessee shall continue to lease the unaffected remainder of the Premises under the terms and conditions of this Lease; Provided, that if the parties agree that specific use areas within the Premises are no longer functional as a result of partial termination by WSDOT, WSDOT shall redevelop such affected areas to a mutually acceptable condition and Lessee shall continue to maintain the Premises as provided herein. For example, if the partial termination leaves an unusable boat launching area remaining within the Premises, the remaining area will be redeveloped by WSDOT to a mutually acceptable condition at WSDOT's expense, and Lessee shall thereafter resume maintenance of such affected area as required by this Lease.

(3) In the event it becomes apparent, in WSDOT's sole judgment, that the Premises have ceased to be used or have been abandoned for a continuous period of sixty (60) days, the WSDOT, at its option, shall have the right to terminate this Lease, provided due notice of such apparent default and the WSDOT's intent to terminate this Lease shall be given to the Lessee not less than thirty (30) days prior to the proposed termination date together with a demand to cure such default within such thirty (30) day cure period.

(4) For default as provided herein.

c. Termination by Lessee for Default by WSDOT: The leasing of the Premises may be terminated by the Lessee if the WSDOT has breached this Lease and, after the WSDOT's receipt of notice of such breach, such breach has not been cured within the time period specified in Section 19 hereof. For purposes of termination under this provision, the Lessee may declare any of the following a breach by the WSDOT, unless otherwise agreed to by the parties:

(1) The interruption of the Lessee's use and occupancy of the Premises or a portion thereof for a period of more than one year;

(2) The failure to redevelop within one (1) year after partial termination any remaining portion of the Premises that has become no longer functional as a result of said partial termination of this Lease by the WSDOT;

(3) The adoption of any policy or regulation by WSDOT that makes the maintenance of the Premises or any portion thereof unreasonably difficult or expensive or the use and occupancy of the Premises or any portion thereof economically or operationally unreasonable or unacceptable to the Lessee or that unreasonably limits or restricts use or occupancy of the Premises for the purposes allowed under this Lease; and

(4) The failure of the WSDOT to indemnify the Lessee as provided elsewhere herein.

25. **SUBSEQUENT USE FOR TRANSPORTATION PURPOSES.** The Lessee and the WSDOT hereby affirm that upon expiration or termination of this Lease for any reason and the subsequent use of the Premises for highway purposes, regardless of the actual use, such highway use will not be considered the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 U.S.C. 138 and 49 U.S.C. 1653(f).

26. **NOTICES.** Except as provided elsewhere herein, wherever a written notice is to be given or made, it shall be personally served or sent through the United States Postal Service by certified mail, postage prepaid, addressed to the party at the address listed for it below, or personally served on the party at the address listed below, unless such party has designated, by prior written notice, a different address:

WSDOT: Property Management Supervisor  
DEPARTMENT OF TRANSPORTATION  
Mail Stop 7338  
P. O. Box 4 7338  
Olympia, WA 98504-7338

COPY TO: Northwest Region Maintenance Engineer  
DEPARTMENT OF TRANSPORTATION  
P.O. Box 330310  
15700 Dayton Avenue North  
Seattle, WA 98133-9710

LESSEE: Superintendent  
Department of Parks & Recreation  
THE CITY OF SEATTLE  
Administration Building  
100 Dexter Avenue North  
Seattle, WA 98109

Said notices shall be effective upon receipt of notice in the manner described above.

27. **CUMULATIVE REMEDIES.** All remedies available at law or in equity to either party for breach of this Lease are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

28. **AUTHORITY OF PARTIES' REPRESENTATIVES.**

a. **Superintendent's Authority:** The term "Superintendent" as used throughout this Lease shall mean the Superintendent of the Lessee's Parks & Recreation Department or his/her successor or designee. In regard to any consent and approval rights of the City Lessee as provided herein, the Superintendent or his/her successor or designee shall have such approval right. The action of the Superintendent pursuant to or in implementation of this Lease does not constitute any official action by any other City of Seattle

department or official that may be required by law, ordinance, rule or regulation.

b. Northwest Region Maintenance Engineer and Property Management Supervisor Authority: All references in this Lease to Northwest Region Maintenance Engineer or Property Management Supervisor shall include that official's functional successor(s).

**29. SURRENDER UPON TERMINATION.**

a. Surrender of Premises: Except as otherwise provided herein, upon termination or expiration of this Lease, the Lessee shall cease its operations on and/or use of the Premises and surrender the Premises to the WSDOT. In the event the Lessee fails to vacate and surrender the Premises on the date provided herein, it shall be liable for any and all costs to the WSDOT arising from such failure.

b. Conditions of Premises Upon Surrender:

(1) Prior to termination for convenience by the Lessee, as provided elsewhere herein, or for a Lessee default where the Lessee has not diligently attempted to cure the default, or expiration of this Lease, the Lessee shall at its expense remove all improvements, trade fixtures, equipment, furnishings, and other personal property owned and/or placed in or on the Premises by the Lessee from the Premises to be surrendered and restore the same to passive recreation use consistent with the landscaping of the I-90 Project, to WSDOT's reasonable satisfaction, unless both parties agree in writing that all or part of said improvements, trade fixtures, equipment, furnishings and other personal property shall remain on the Premises. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to the WSDOT.

(2) In the event the Lease is terminated by WSDOT because of a Lessee default and the Lessee has diligently attempted to cure the default within the cure period but was unable to do so, the Lessee shall be granted a 120 day permit to enter upon the affected Premises and to, at its expense, remove all improvements, trade fixtures, equipment, furnishings, or other personal property and restore the same to passive recreation use consistent with the landscaping of the I-90 Lid, to WSDOT's reasonable satisfaction unless both parties agree in writing that all or part of said improvements, trade fixtures, equipment, furnishings and other personal property shall remain on the Premises. The time period for said permit may be extended if in WSDOT's sole judgment, an extension is warranted. In removing such material and property, the Lessee shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the Lessee at no cost or expense to WSDOT. Further, Lessee hereby agrees to retain all liability and to protect, save, and hold harmless and defend WSDOT, its authorized agents, officers and employees, and the Federal Highway Administration from all

claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of the acts or omissions of the Lessee, or any of its officers, employees, agents, licensees, invitees, contractors, or the contractor's subcontractors or any person whomsoever on the Premises for which the improvement, trade fixture, equipment, furnishing, or other personal property is located until said removal and restoration is complete. The liability and indemnification obligations contained in this section shall survive the expiration or termination of this Lease.

(3) In the event the Lease is terminated by WSDOT for a transportation need or for convenience, or by the Lessee for a WSDOT default as provided elsewhere herein, the Lessee is not obligated to remove improvements, trade fixtures, equipment, furnishings and other personal property from the Premises, but has the right to remove Lessee's items it desires prior to the effective termination date.

c. Disposition of Unremoved Improvements and Property: In the event that the Lessee has not removed its improvements, trade fixtures, equipment, furnishings, and other personal property upon termination or expiration of this Lease, or as otherwise required herein, the improvements and property shall become the property of the WSDOT and WSDOT may dispose of the property and improvements at Lessee's expense in a manner prescribed by the WSDOT and the Lessee shall reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such removal and disposal within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in removing and disposing of the improvements and property; Provided, further that this provision does not apply where termination is as provided in paragraph 29.b(3) herein.

d. Failure to Restore the Premises: In the event the Lessee fails to restore the portion of the Premises to be surrendered to passive recreation use consistent with the landscaping of the I-90 Lid to the reasonable satisfaction of WSDOT upon termination or expiration of this Lease, or as otherwise provided herein, the WSDOT may restore said Premises at Lessee's expense and the Lessee will reimburse the WSDOT for any reasonable expense incurred by the WSDOT in connection with such restoration within thirty (30) days of the date of WSDOT's invoice; Provided, that the WSDOT may, at its sole discretion, withhold compensation otherwise due the Lessee under that separate Open Space and Recreation Area I-90 Maintenance, Redevelopment and Land Conveyance Agreement between the parties hereto, in an amount equal to the reasonable costs incurred in restoring the property; Provided, further that this provision does not apply where termination is as provided in paragraph 29.b(3) herein.

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30. NO WAIVER. No action other than a notice by one party to the other specifically stating that such notice has the effect of a waiver, shall constitute a waiver of any particular breach or default of such other party. No such notice shall waive a party's failure to fully comply with any other term, condition, or provision of this Lease, irrespective of any knowledge any officer, employee, or agent of the other party may have of any breach or default of, or noncompliance with, such other term, condition, or provision. No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Lease. The performance or acceptance of maintenance services for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

31. SUPERSESION OF PRIOR LEASES. This Lease represents the entire agreement of the parties with regard to the subject matter hereof and supersedes any prior agreement not incorporated herein. In the event of any inconsistency between this Lease and any prior agreement, whether written or oral, the terms of this Lease shall prevail.

32. NEGOTIATED LEASE. The parties to this Lease acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Lease are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, the parties hereto have had their respective representatives sign their names in the spaces below:

THE CITY OF SEATTLE  
Lessee

By: Guido J. Jaramila, Jr.  
Acting Superintendent

Date: 25 April 1997

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION  
WSDOT

By: Joachim P. Kier  
DIRECTOR, REAL ESTATE SERVICES

Date: 4/18/97

APPROVED AS TO FORM:

By: Bryce Brown  
Assistant Attorney General

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STATE OF WASHINGTON )  
 ) ss. (WSDOT ACKNOWLEDGMENT)  
COUNTY OF THURSTON )

On this 1874 day of April, 1997, before me personally appeared Joaquin Postinger, to me known to be the duly appointed Director, Real Estate Services, Washington State Department of Transportation, who stated, on oath, that he executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein set forth, and that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Tom A. Dale  
Signature  
Tom A. Dale  
(Print or type name of notary)  
Notary Public in and for the State Washington,  
residing at Elmer  
My commission expires 5/12/00



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STATE OF WASHINGTON )

) ss.

(CITY ACKNOWLEDGMENT)

THE COUNTY OF KING )

On this 25<sup>th</sup> day of APRIL, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CYRIL E. B. ~~JUANITA FOR KENNETH BOUNDS~~ to me known to be the ACTING ~~SUPERINTENDENT OF PARKS & RECREATION~~ of The City of Seattle, who on oath stated that He executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes herein mentioned, and that He was authorized to execute the said instrument for and on behalf of The City of Seattle.

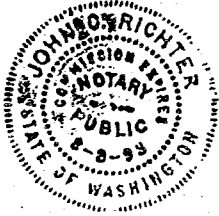
WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

John C. Richter  
Signature

JOHN C. RICHTER  
(Print or type name of notary)

Notary Public in and for the State of Washington,  
residing at LYNNWOOD

My commission expires 8-8-98



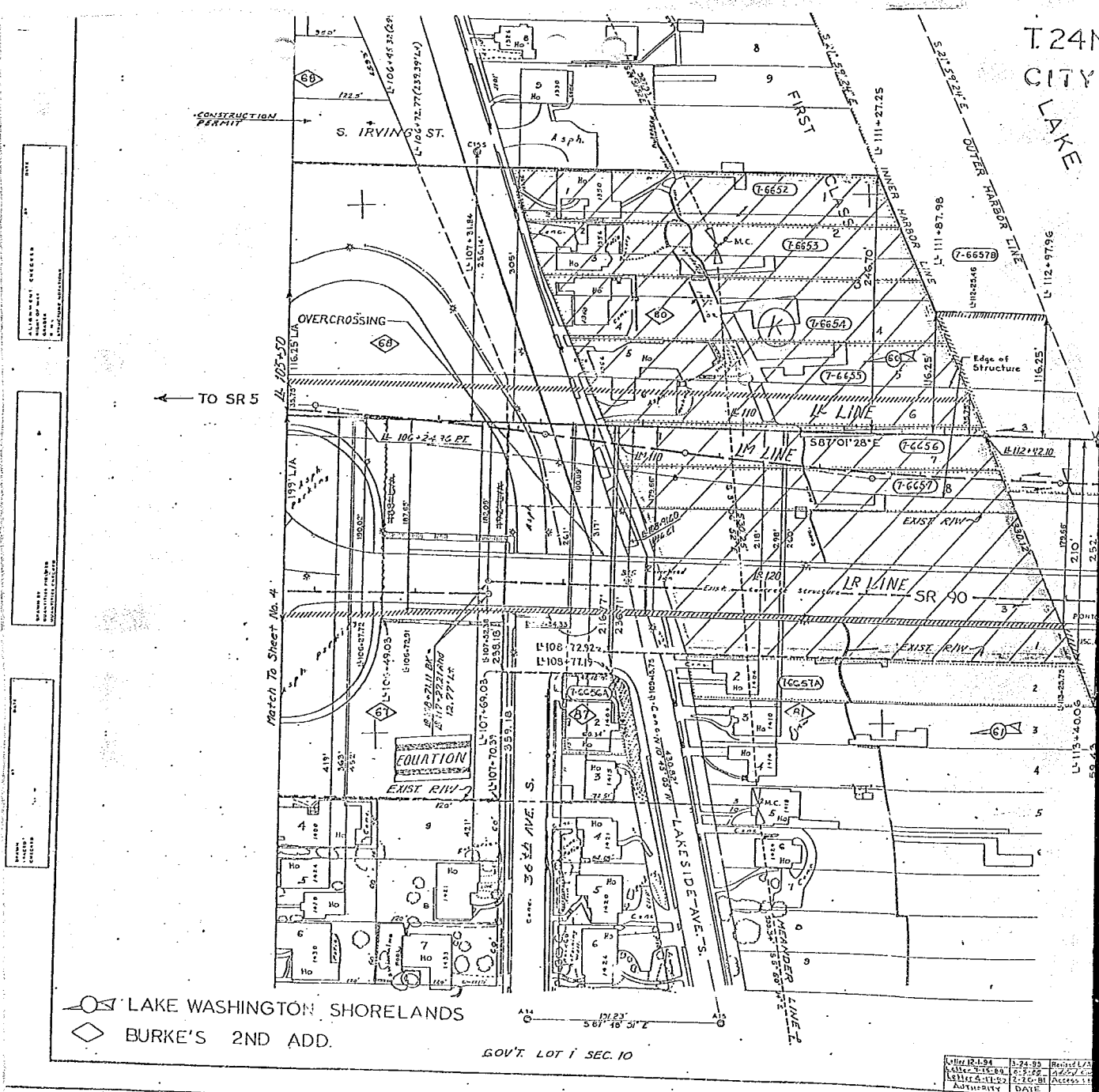
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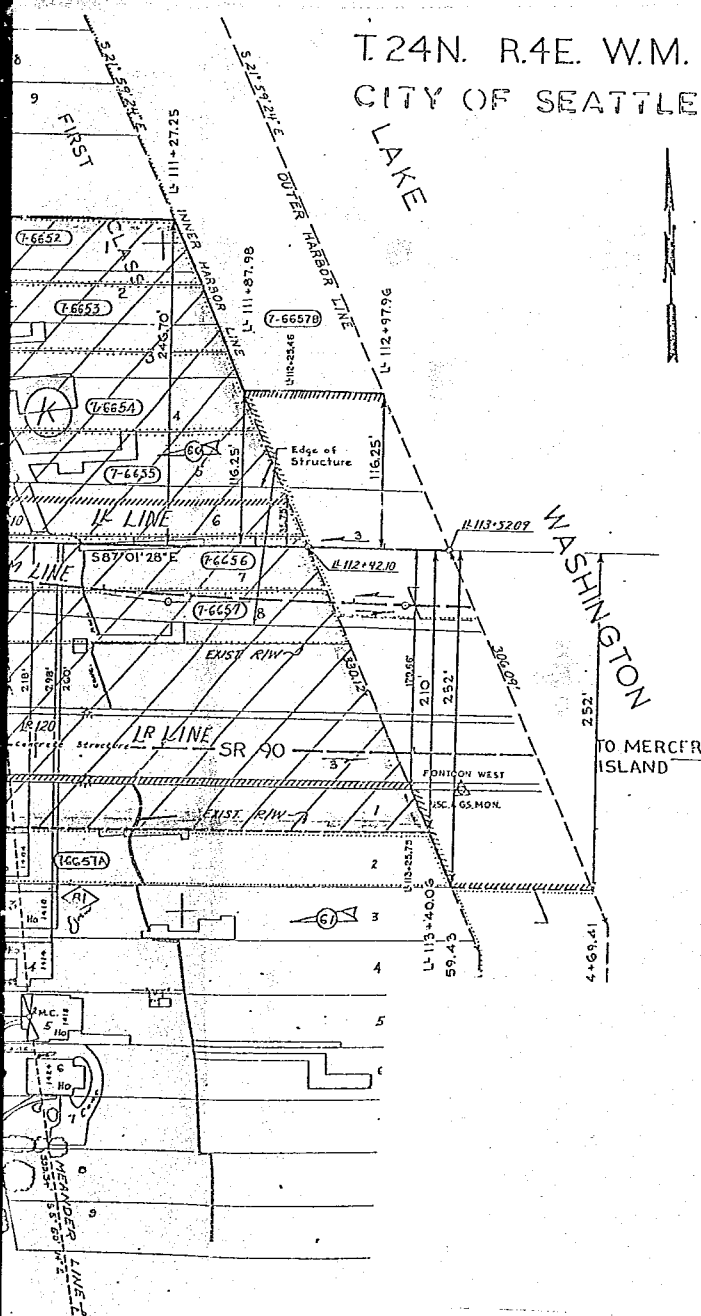
# LEVEL OF CARE

		NATIVE	LOW	MEDIUM	HIGH
GRASS HEIGHT:	Turf			2-3" 15 Mow/Year	1.5-2" 30 Mow/Year
	Rough	Unmown Meadow	6-9" 4 Mow/Year	3-5" 8 Mow/Year	
EDGE DEFINITION:		None	None	Chemically	Chemically & Mechanically Clean, Sharp, Defined Boundary
PLANT CARE:	Pruning	None	None	Perimeter	Shearing & Shaping
	Fertilization	None	25% per year	50% per year	100% per year
	Irrigation	None	None	Cont. Operation 2nd Priority	Cont. Operation 1st Priority
PLANT REPLACEMENT:		None	None	As Time Allows	Immediate
DANGER TREES:		Immediate Removal of Danger Trees			
WEED CONTROL:		Noxious Only	Noxious & Invasive	Seasonal	Weed-Free Appearance
NOXIOUS WEEDS:		NO NOXIOUS WEEEDS			
MULCH:		None	None	None	15% Per Year
DISFASE/PEST CONTROL:		None	Plant Survival	Plant Survival	Appearance
VANDALISM/LOSS (Except Plants):		None	Limited	Repair/Replacement/Cleaning	
LITTER CONTROL:		Annual	Annual	4 Times Per Year	20 Times Per Year
PAVED AREAS (Including Trails and Active Recreation Surfaces):		Safe, Clean, Smooth, Litter Free, Snow & Ice Removed, Patch, Seal As Required			

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FED. ROAD DIV. NO.	STATE	FED. AID PROG. NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
10	WASH.	1-90-1(4)	1-90-1(4)		

**EXHIBIT "A"**

C.S. SR 90

AIRSPACE LEASE

DAY STREET WATERFRONT AREA

AA-1-10543

AGREEMENT NO. IC:1-17-05679

SHEET 1 OF 1 SHEETS 19

SCALE 1 IN. = 50 FT.

NOTE:

1. For Ownership Data, See Sheet No. 9.

NOTE: Scale changes on Plan Sheets ahead.

ROADWAY	CURVE DATA			
	PL STATION	Δ	R	T
LL LINE	104+66.52	111° 42' 42" RL	11000'	137.86'

**LEGEND**

50' 0 50' 100' 200'

Scale In Feet

ACCESS TO BE PROHIBITED SHOWN THUS

PROPERTY OWNERSHIP NUMBERS

PROPERTY LINES

STATE OWNED - DEPT. OF TRANSPORTATION

EXISTING PAVED STREETS

EXISTING GRAVEL STREETS

RETAINING WALLS (EXISTING)

CO-ORDINATED MONUMENTS

This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on November 3, 1971, as revised by the Board of Review Findings and Order issued March 26, 1973, and to provisions of the Memorandum Agreement approved December 21, 1976, between the cities of Seattle, Mercer Island and Bellevue; the Metropolitan of Metropolitan Seattle; King County and the Washington State Department of Transportation.

15311  
SR 90 MP 1.33 TO MP 3.25  
JCT. SR 5 TO W. SHORE MERCER ISLAND  
SEC. 2, BRADNER PLACE S. TO  
W. SHORE MERCER ISLAND  
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL  
STA. L 105+50 TO STA. L 113+52.09

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
OLYMPIA, WASHINGTON

W. A. BULLEY

SECRETARY



A. D. Anderson  
DESIGN ENGINEER

All Plans are subject to change.  
Parties seeking precise, current information  
should consult the official plan on file in  
the Department of Transportation in Olympia.

July 6, 1979  
SHEET 5 OF 43-9 SHEETS

Designated for Limited Access Control By Comm. Res. No. 95, July 23, 1953

Letter 12-1-94	1-24-95	Revised L/A on L 110+50 to L 112+75.46 and on R 110+50 to L 113+40.06	NEW
Letter 2-15-88	2-5-88	Added L 110+50 to L 112+75.46 and on R 110+50 to L 113+40.06	NEW
Letter 4-15-82	2-24-81	Access removed from L 110+50 to L 112+75.46 and on R 110+50 to L 113+40.06	NEW
Advisory	DATE	SUBSEQUENT APPROVAL	BY

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